TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 68

CITY OF HAMMOND, PETITIONER,

vs.

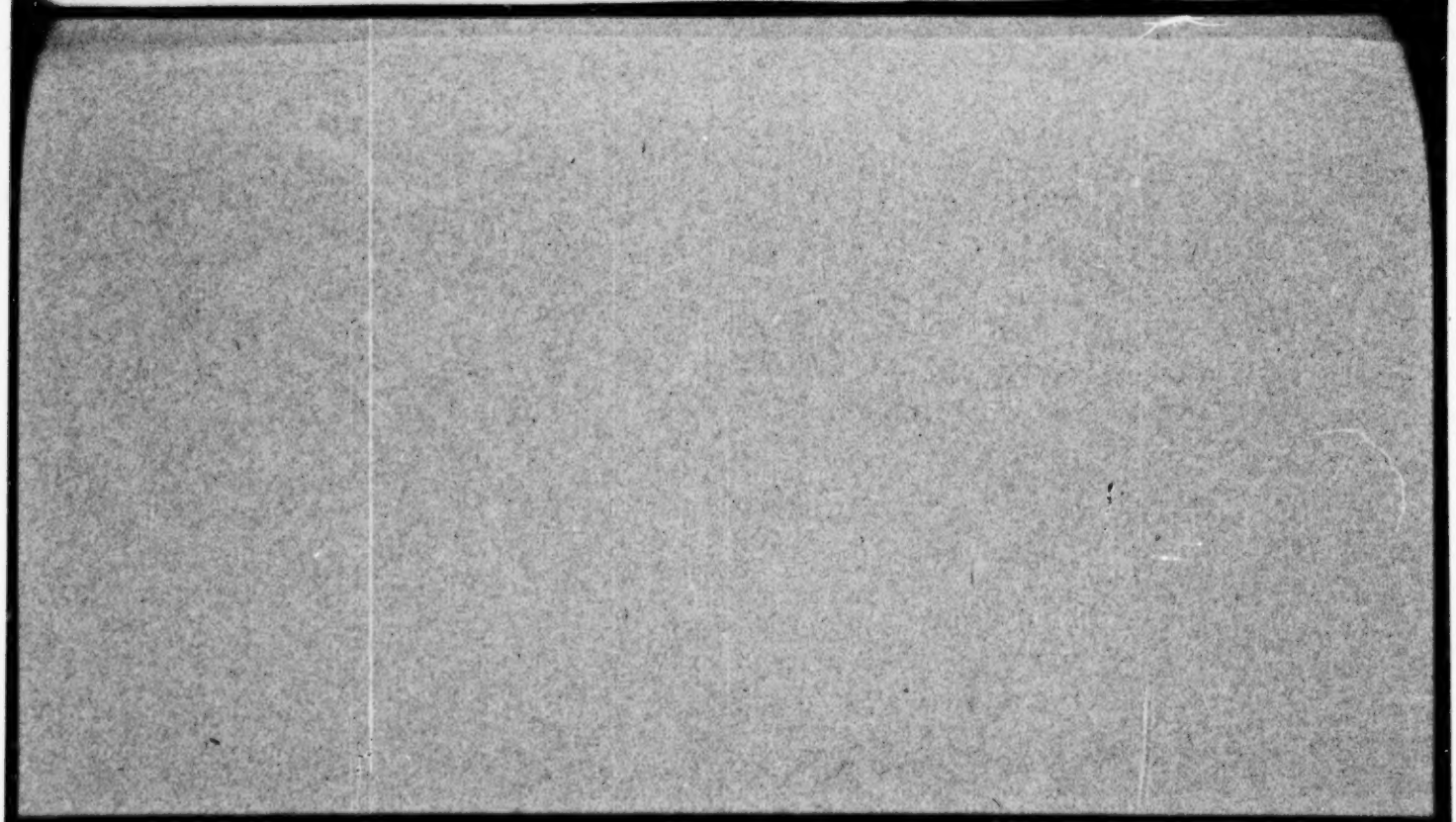
FARINA BUS LINE AND TRANSPORTATION COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 31, 1928

CERTIORARI GRANTED OCTOBER 11, 1928

(31,952)



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OCTOBER TERM, 1926.

No. 386

CITY OF HAMMOND, PETITIONER,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Farina Bus Line and Transportation Company, a corporation, *Plaintiff*
vs
City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant*
No. 26
In Equity

Be It Remembered That heretofore, to-wit, on the 12th day of June, A. D. 1925, before the Honorable Thomas W. Slick Judge of said court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the plaintiff and files its complaint herein which complaint omitting formal parts, is in the following words and figures, to-wit:

Plaintiff complains of the defendant and for cause of action alleges that it, the plaintiff, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and that as such corporation the plaintiff is a resident and citizen of the state of Illinois. That the defendant is a municipal corporation existing under and by virtue of
3 the laws of the State of Indiana, and is exercising the functions of a municipal corporation pursuant to said laws, and that it exists only in and within the State of Indiana, as such municipal corporation, and not otherwise. That the amount in controversy herein, exceeds the sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs.

Plaintiff further alleges that it is engaged in the business of a common carrier; that it owns and operates a motor bus line between various towns and cities in the State of Illinois, and the defendant city of Hammond, Indiana; that between said points it carries passengers for hire, and that it has been engaged in such business for more than two years last past and is now so engaged. That this plaintiff in the conducting of its business aforesaid, owns all of said motor busses, and in

the operation thereof, has arranged a definite schedule over public highways in the defendant city and the State of Illinois. That the defendant city is located on the state line dividing the states of Illinois and Indiana, and is a city of a population of approximately sixty thousand. That is has a large business district and also has large retail stores. That plaintiff's bus line operates between small towns and cities in the State of Illinois, and carries its passengers to the defendant city, which passengers so carried, are desirous of trading and shopping in the business district of said defendant; that all of said motor busses used by the plaintiff in its business, are of an approved type, sufficiently large to carry twenty passengers; that plaintiff has procured all
4 motor bus, automobile and vehicle licenses required by the states of Illinois and Indiana, for each bus that it operates; that plaintiff is ready, willing and able to comply with all lawful and valid regulations regarding the operation of its motor busses in the State of Indiana and the State of Illinois; that plaintiff's employes in charge of said busses are all competent and efficient licensed chauffeurs under the law governing; that plaintiff has, through the operation of said transportation system, developed a profitable business and built up a substantial good will among people who travel in localities where plaintiff's busses operate. That plaintiff now has an investment in its business aforesaid, in excess of $15,000.00. That from the cities and towns in Illinois, to the defendant city in Indiana, plaintiff's bus system is the only means of transportation, and plaintiff hauls from such outlying cities and towns, many people who desire to trade and shop in the defendant city; that in conducting its business aforesaid, the motor busses of the plaintiff operate upon a definite schedule to and from the defendant city and the outlying cities and towns as aforesaid, which schedule is so maintained for the convenience of its patrons and the traveling public generally.

Plaintiff further says that on the 23rd day of May, 1925, the defendant through its Common Council, duly passed an ordinance regulating and routing certain vehicles for hire and prohibiting their use of certain streets within the defendant city; that said ordinance was numbered 1945 and that an exact copy of the same is attached to this com-
5 plaint and made a part hereof, marked Plaintiff's Exhibit "A". That said ordinance was duly approved by the Mayor of the defendant city, on the 23rd day of May, and

thereafter filed in the office of the City Clerk of said city, and thereafter due publication of said ordinance, because of its penal provisions, was had as by law required, and the same is now in full force and effect.

Plaintiff further alleges and says that by the terms of said ordinance, the plaintiff is deprived of the use of certain streets in said defendant city, said streets being set out and named in Section one of said ordinance; that the streets and parts of streets so set out in section one of said ordinance, are the streets in the main business section of said city, and are in that section to which most of the passengers hauled by the plaintiff, seek to go. Plaintiff further says that it cannot operate upon certain other of said streets in the defendant city, without permission from the Board of Public Works of said defendant city, as specified in Section Two of said ordinance; that all streets and parts of streets so specified in section two of said ordinance, are streets leading to the main business section of the defendant city; that heretofore, plaintiff in its business has traversed the streets named in section one and section two of said ordinance, without hindrance, and it has been necessary in the conducting of said business, to traverse such streets.

Plaintiff further says that the passage and enforcement of said ordinance will greatly damage and destroy the busi-
6 ness of this plaintiff; that if said ordinance is enforced, this plaintiff will not be able to operate its bus line so as to give service to its patrons. That under said ordinance, it cannot enter the business section of said city, wither for taking on or discharging passengers; that most of the passengers that it carries, are desirous of entering the business district and trading and shopping in the stores located in said district in said defendant city; that by reason of the aforesaid fact, passengers that it is now, and has been heretofore carrying will no longer ride in its busess; that its service will be disrupted and its business completely destroyed. That through said ordinance and the enforcement thereof, the investment that the plaintiff now has in said transportation system, exceeding $15,000.00 will be entirely lost to it, and its good will destroyed. That plaintiff's business demands uniform and constant operation at regular intervals and over convenient highways; that in the conducting of its business aforesaid, it is necessary to operate over and along the streets specified in sections one and two of said ordinance; that the injury and damage that will be suffered by the plain-

tiff is irresparable and cannot be compensated in money damages.

Plaintiff further alleges and says that said ordinance is unconstitutional and void, in this, that said ordinance violates section twenty-three of the Constitution of the State of Indiana; that said ordinance is further void and unconstitutional in this, that it violates the Fourteenth Amend-
7 ment of the Constitution of the United States, in that it denies to this plaintiff the equal protection of the laws. That said ordinance is further unconstitutional and void, in that it unreasonably, arbitrarily and unlawfully discriminates against the plaintiff; that by the terms of said ordinance any bus line having a franchise contract with said city, is expected from the terms thereof and is allowed to operate over all streets in said defendant city, including the prohibited area set out in section one thereof, and to operate over other streets specified in section two of said ordinance, without a permit from the said Board of Public Works; that the Calumet Motor Coach Company, a corporation, is engaged in the transportation of passengers for hire by motor busses, and is the only person having such franchise contract with the defendant, and not subject therefore, to the terms of said ordinance. Plaintiff further avers that said Calumet Motor Coach Company operates in the cities of Hammond and East Chicago, Indiana, and the city of Chicago, Illinois, but does not operate in and to the cities and towns in Illinois served by this plaintiff.

Plaintiff further says that the highways over which it operates, including the streets and parts of streets in the defendant city mentioned in said ordinance, are not unduly congested, but they are so constructed that they can reasonably and without damage, carry heavier burdens than those imposed upon them by plaintiff's motor busses; that no heavier or different burdens are imposed upon the streets and highways named in said ordinance than is imposed
8 by the operation of other motor vehicles of the same kind and character, operated by this plaintiff, and by others engaged in the business similar to the business of the plaintiff, including the business of said Calumet Motor Coach Company, excepted by the terms of said ordinance, aforesaid. That the motor busses of this plaintiff will impose no greater burdens on said streets and highways nor congest traffic to any greater extent, than automobiles and busses owned by private individuals which are now permitted by the terms of

said ordinance, to pass over said streets and highways. Plaintiff further avers that it maintains on private property abutting on Sibley Street each of Hohman Street in said defendant city, a waiting room for its patrons, and that it unloads and takes on passengers at said point; that said place is located within the prohibited area specified in section one of the ordinance aforesaid. Plaintiff avers that by reason of the aforesaid facts, said ordinance is void, in that it unlawfully and unreasonably discriminates against this plaintiff and its business; that said ordinance is aimed to destroy the business of the plaintiff, to render its investment worthless, and to destroy competition, solely to the interest of said Calumet Motor Coach Company, excepted by the terms of said ordinance.

Plaintiff further alleges that said ordinance is unconstitutional and void in that it delegates to the Board of Public Works of the defendant the right to issue, or to refuse to issue, a permit to this plaintiff and to others similarly
9 situated, at its pleasure; that said ordinance contains no standard by which said defendant city can judge whether or not a permit should be issued; that the delegation of power contained in section two of said ordinance is unconstitutional and void, and discriminates against the plaintiff and its property.

Plaintiff further alleges and says that after the adoption of said ordinance, it did apply to the Board of Public Works of the defendant for a permit to operate over and upon certain streets of the defendant city, jurisdiction over which was vested, by the terms of said ordinance, in the Board of Public Works. That said application has been on file for more than two weeks without any action being taken by said defendant, or its Board of Public Works, and that on the 12th day of June, 1925, in the afternoon thereof, said defendant refused to issue said permit and refused to permit this plaintiff to operate upon said streets; that by such refusal of the defendant city to permit its operation, the plaintiff cannot enter the business portion of said defendant city and cannot have its busses drive to and leave the waiting station aforesaid; that it will be compelled, unless the defendant is restrained from enforcing said ordinance, to discontinue its service, thereby being deprives of its property and the good will of its business that it has heretofore established; that said defendant through its officers and agents, is now threatening to stop this plaintiff from operating its busses over and upon the

streets described in said ordinance; that said defendant is threatening to arrest the employes of this plaintiff who oper-
said busses, and to otherwise harass this plaintiff.
10 Plaintiff further avers that it has no plain, adequate
or speedy remedy at law; that money damages cannot compensate the plaintiff; that its damages cannot be ascertained in terms of money value; that unless an injunction issue out of this court, restraining said defendant and all of its officers servants and agents from enforcing said ordinance and the terms thereof against this plaintiff, this plaintiff will be deprived of its rights as a citizen of the United States and will be deprived of rights as guaranteed to it by the State of Indiana.

Plaintiff further alleges that by reason of the threatened enforcement of said ordinance against it, which threatened enforcement is to occur immediately, it is impossible to serve said defendant with any notice of hearing for an injunction, as herein prayed. That time is of the essence, and that it is necessary, to preserve the rights and property of this plaintiff, to issue a temporary restraining order without notice, restraining said defendant and all its officers, servants and agents from enforcing said ordinance.

Wherefore, plaintiff prays judgment and asks that this court decree that the defendant and all of its officers, servants and agents be perpetually enjoined from enforcing Ordinance No. 1945 passed by the defendant city and set out at length herein, as against this plaintiff, and that a temporary restraining order issue without notice, restraining said defendant and all of its officers, servants and agents from enforcing the terms of said ordinance against this plaintiff, and that
said defendant and all of its officers, servants and agents
11 be restrained from arresting, imprisoning, confining and
prosecuting this plaintiff or any of its agents, servants or employes, for any alleged violation or infringement of the ordinance aforesaid, and plaintiff prays for all other further and proper relief in the premises.

(signed) CRUMPACKER & FRIEDRICH,
Attorneys for Plaintiff.

State of Indiana }
County of Lake } ss.

CHARLES W. CHASE, being first duly sworn, upon his oath says that he is President of the Farina Bus Line and Transportation Company, a corporation, the plaintiff in this action; that he is personally familiar with the facts stated in the foregoing complaint, and that said facts so stated, are true.

And further affiant sayeth not.

(signed) CHARLES W. CHASE.

Subscribed and sworn to before me the 12th day of June, A. D. 1925.

(signed) MOLLIE KRIEGER,
(Seal) *Notary Public.*

My commission expires November 5, 1925.

(Exhibit "A" attached to the complaint, being identical with Ordinance No. 1945 appearing as Plaintiff's Exhibit 4 in the statement of the evidence at page 68 of this record, is therefore omitted from this part of the record.)

12-a And Be It Further Remembered that afterwards, to-wit: At the said Special April Term of said court, on the 12th day of June, A. D. 1925, before the Honorable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Filed June 12 1925.

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*, *vs.* City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant.* } No. 26 In Equity

Comes now the plaintiff and files its verified application for a temporary restraining order without notice, restraining the defendant and all of its officers, servants and agents from enforcing Ordinance No. 1945, passed by the defendant on the 23rd day of May, 1925, as set out at length in the complaint filed in this cause;

And the plaintiff now tenders its injunction bond in the penal sum of One Thousand ($1,000.00) Dollars, signed by the United States Fidelity & Guaranty Company as surety, conditioned as provided by law;

And the court having examined the verified petition and being duly advised in the premises, does now grant the plaintiff's motion for a temporary restraining order; and the court having approved said injunction bond, It Is Now Ordered that the defendant and all its officers, servants and agents be temporarily restrained and enjoined from enforcing said Ordinance No. 1945 adopted by the Common Council of the City of Hammond, Lake County, Indiana, May 23rd, 1925, and from making any arrests or entering upon any acts in the enforcement of said ordinance or under color of the same.

12-b

And the court now fixes the 15th day of June, A. D. 1925, at two o'clock P. M., on said day, in the Federal Building in the City of Hammond, Lake County, Indiana, as the time for a hearing on the question as to whether said temporary restraining order shall or shall not be made a temporary injunction, and directs that the defendant be notified accordingly.

Done at the city of South Bend, in said District, the 12th day of June, A. D. 1925.

(signed) Thos. W. Slick,
Judge of the United States District Court.

And Be It Further Remembered that afterwards, to-wit: Issued 1925.
At the said Special April Term of said court, on the 12th day of June, A. D. 1925, before the Honourable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Summons was issued to the Marshal of the District of Indiana, which summons is in the following words, to-wit:

12-c UNITED STATES OF AMERICA,

District of Indiana.

The President of the United States of America, to the Marshal of the District of Indiana—Greeting:

You are hereby commanded to summon City of Hammond, a municipal corporation, if it be found in your District, to be and appear in the District Court of the United States, for the District of Indiana, aforesaid, at Hammond, on the 3rd day of July, next, to answer a certain complaint for injunction filed and exhibited in said Court against it, by Farina Bus Line and Transportation Company, a corporation, Hereof it is not to fail, under the penalty of the Law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Thomas W. Slick, Judge of said Court, and the seal thereof, this 12th day of June, A. D. 1925.

WILLIAM P. KAPPES,
Clerk.

(Seal)

(signed) By MAUDE B. SWANK,
Deputy Clerk.

Memorandum

The said defendant is required to file answer or other defense in this suit in the Clerk's office of said Court on or before the twentieth day after service, excluding the day thereof; otherwise the said Bill may be taken pro confesso.

WILLIAM P. KAPPES,
Clerk.

(signed) By MAUDE B. SWANK,
Deputy Clerk.

Be It Further Remembered that afterwards, to-wit: on the 13th day of June, A. D. 1925, the following proceedings were had in said cause:

13 Thereupon the Marshal returned said Writ with his return endorsed thereon, which return is in the following words and figures, to-wit:

District of Indiana

I received this Writ at Hammond, in said District, at ..... o'clock ..... M., on the 13th day of June, A. D. 1925, and served the same in Lake County, as follows: 13th day of June, 1925, by copy upon the within named City of Hammond, a municipal corporation, by reading the same to and within the hearing of, and by delivering a true copy of this writ to Daniel Brown, Mayor of said City of Hammond, at Hammond, Lake County, Indiana, June 13, 1925, he being the highest representative of said corporation found in my district; and also delivered to said Daniel Brown copy of temporary restraining order.

L. P. MEREDITH,
U. S. Marshal.
(signed) By ELLIS B. CROSS,
Deputy.

Marshal's Costs:

1 Service of Spa	$2.00
1 Serv Order	2.00
	$4.00

Filed Jun 20, 1925. William P. Kappes, Clerk.

And Be It Further Remembered that afterwards, to-wit: At the said Special April Term of said court, on the 26th day of June, A. D. 1925, before the Honourable Thomas W. Slick Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Filed [illegible] 1925.

Farina Bus Line and Transportation Company, a corporation,
Plaintiff,
vs.
City of Hammond, Lake County, Indiana, a municipal corporation,
Defendant.
No. 26
In Equity

14 Comes now the defendant by McMahon & Conroy, its attorneys, and files its motion to dismiss the above entitled cause of action, which motion, omitting formal parts, is in the words following, to-wit:

Now comes the defendant, City of Hammond, and moves the Court to dismiss this action and that it take its costs in this suit incurred, for the following reason, to-wit:

I.

There is insufficiency of fact to constitute a valid cause of action in equity against this defendant.

(signed) William C. McMahon,
(signed) Joseph H. Conroy,
(signed) L. L. Bomberger,
Solicitors for Defendant.

Be It Further Remembered that thereafter, to-wit: At the July Term of said Court, on the 10th day of July, A. D. 1925, before the Honourable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

July 10. Farina Bus Line and Transportation Company, a corporation, *Plaintiff*, *vs.* City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant.* } No. 26 In Equity

Come now the parties, appearing by counsel, and the motion of the defendant to dismiss the complaint, is overruled to which ruling the defendant excepts. Thereupon the defendant files answer, which answer, omitting formal parts, is in the following words and figures, to-wit:

The defendant City of Hammond for answer to the Bill of Complaint herein, admits that the plaintiff is a corporation organized under the laws of the State of Illinois, and is a resident and citizen of said State; that the defendant is a municipal corporation of the State of Indiana.

Defendant is not informed as to the amount in controversy.

Defendant admits the allegation of said Bill that plaintiff is engaged in the business of carrying passengers for hire between various cities in the State of Illinois, and the defendant City, and has been such for more than two (2) years last past, and that operation is under a schedule.

Defendant admits the allegation that it is a city of approximately 60,000 people and that it has a large business district and large retail stores; that plaintiff carries passengers from the State of Illinois to said City that they may trade in the business district thereof.

Defendant admits the allegation as to the character and size of the motor busses used by plaintiff.

As to whether plaintiff has procured all motor bus, automobile and vehicle licenses required by the states of Illinois and Indiana, the defendant is not informed.

As to the competency and efficiency of plaintiff's employes or chauffeurs, defendant is not informed.

16 As to the allegation that plaintiff has developed a profitable business and built up a substantial good will defendant is not informed, neither is it informed as to the value of plaintiff's investment in said business.

As to the allegation that plaintiff's bus system is the only means of transportation from the cities and towns in Illinois

to the defendant city, defendant is not informed and further answers that said allegation is uncertain and indefinite.

Defendant admits the passage and validity of its Ordinance No. 1945, as alleged in said complaint, and shown in Exhibit "A" attached thereto.

Defendant denies that in order to conduct the business of carrying passengers from points in the State of Illinois to the business district of the City of Hammond, it is necessary to traverse the streets and parts of streets mentioned in Section 1 of said ordinance.

Defendant denies that the passage and enforcement of said ordinance will either damage or destroy the business of the plaintiff, and that plaintiff will not be able, on account thereof, to operate its bus line so as to give service to its patrons. Defendant denies the allegation that under said ordinance plaintiff cannot enter the business section of the defendant city, either for taking up or discharging passengers, but on the contrary, alleges the fact to be that there is no restriction against moving over and upon the streets or parts of streets not mentioned in Section 1 of said ordinance, and
17 that while said streets and parts of streets mentioned in Section 1 are the most congested in the business district of said city, there are other available and convenient streets for passing into and through said district, and defendant denies that the enforcement of said ordinance will disrupt and destroy the business and good will of the plaintiff. Defendant denies that in order to conduct its business plaintiff must necessarily operate over and along the streets specified in Section 1 of said ordinance, or in Section 2 thereof.

Defendant denies the allegation of said Bill that the streets and parts of streets mentioned in said ordinance are not unduly congested, but alleges the fact to be that they are greatly and exceedingly congested, especially those parts of streets mentioned in Section 1 of said ordinance.

Defendant admits the allegation that plaintiff has a waiting room on Sibley Street about 100 feet each of Hohman Street in said city, and that said part of Sibley Street is within the prohibited area specified in Section 1 of said ordinance, but defendant says that to receive and discharge passengers at or by reason of said waiting room, plaintiff has been stopping its motor busses in the street opposite said waiting room, and receiving and discharging passengers in the street, and not on private property.

Defendant denies that plaintiff ever applied to the Board

of Public Works of the defendant city for a permit to stop to receive or discharge passengers upon any street or part of street, which, by the terms of Section 2 of said ordinance,
said Board of Public Works is authorized to permit.
18 Defendant admits that on the 12th day of June, 1925,
the said Board of Works refused to issue a permit as requested by the plaintiff, for the reason that such request called for streets and parts of streets not within the jurisdiction of said Board to grant. Defendant admits that by the enforcement of said ordinance, plaintiff cannot drive its motor busses to and from the waiting room on Sibley Street aforesaid, but denies that it cannot enter the business portion of the defendant city under said ordinance.

Defendant admits that it has threatened to and will enforce said ordinance, and arrest the employes of plaintiff who violate the same.

For a second, distinct and separate defense to said Bill of Complaint, defendant says that on said 12th day of June, 1925, the Board of Works of said City tendered to the plaintiff a permit to operate its said busses by stopping the same to receive and discharge passengers on State Line Street from Standard Avenue to Rimbach Avenue, on Rimbach Avenue from State Line Street to Ann Street, on Ann Street from Rimbach Avenue to Russell Street, on Russell Street from Ann Street to State Line Street, by the use of which streets, plaintiff would be able to receive and discharge passengers within one block of the courthouse, and within from one to two blocks of the most important business houses and banks of said city; that plaintiff declined and refused to accept said permit.

Wherefore, defendant prays that said Bill be dismissed with costs.

(signed) William C. McMahon
(signed) Joseph H. Conroy
(signed) L. L. Bomberger
Solicitors for Defendant

32 Be it Further Remembered that afterwards, to-wit: At
the said July Term of said Court, on the 16th day of July, A. D. 1925, before the Honourable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

Farina Bus Line and Transportation Company
vs
City of Hammond
} In Equity No. 26

Comes now the plaintiff, by Crumpacker and Friedrich of counsel, and lodges its statement of the evidence in the Clerk's Office, for filing upon approval by the court, said statement being in the words following, to-wit:

33 STATEMENT OF THE EVIDENCE

(Plaintiff's Exhibit One)

Affidavit of Charles W. Gifford

United States of America
District of Indiana
} ss.

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

(Hammond Division)

Farina Bus Line and Transportation Company, a corporation
Plaintiff
vs
City of Hammond, Lake County, Indiana, a municipal corporation,
Defendant
} In Equity No. 26

Filed Jul 17 1925 William P. Kappes, Clerk.

CHARLES W. GIFFORD being first duly sworn, on oath says that he is Superintendent of the plaintiff in the above entitled cause and is familiar with the facts connected with its operation. That said company does now and has for four years past operated a line of automobile busses carrying passengers for hire from certain cities and towns in Illinois, namely, Chicago Heights, Glenwood, Homewood, Franklyn,

Thornton, Oak Glen and Lansing, into the State of Indiana, through the Town of Munster, Indiana, and through that town into the city of Hammond. That the Town of Munster and the City of Hammond lie along the state line between the
34 states of Indiana and Illinois. That the city of Hammond is contiguous to and immediately north of the town of Munster. Under the company's routing it comes into the town of Munster on an east and west street known as Ridge Road and turns north on a street in Munster known as Hohman Street which street extends to and through the city of Hammond. Under the company's operation as now and heretofore conducted it proceeds north on said Hohman Street to the business district of the city of Hammond. It maintains a depot and terminus on Sibley Street in said city of Hammond which is an east and west street intersecting said Hohman Street in the business district, said terminus and depot being one-half block east of Hohman Street on said Sibley Street. The company does not haul passengers between points in the city of Hammond, but brings into said city and to said terminus passengers from Illinois and the town of Munster. The company brings into the city of Hammond approximately six hundred (600) passengers per day, over five hundred (500) of which are brought from the towns above referred to in the state of Illinois through said Town of Munster. Its depot at the terminus on Sibley Street is not in the street, but is on private property which fronts and abuts on the street. There it maintains a waiting-room and ticket office. It operates four busses over its routes, on a schedule of about one hour each way during the day. It has invested in its busses over Thirty-two Thousand ($32,000.00) Dollars and supplies to the city of Hammond the only transportation by motor bus or otherwise between the towns above referred
35 to in Illinois and the city of Hammond.

Affiant further says that said company is operating in Illinois and up to the state line under a certificate of convenience and necessity, granted by the Public Service Commission of the State of Illinois,—nn all respects as authorized by law. It has also registered its busses in Illinois and Indiana as required by the laws of both states. Its chauffeurs are licensed and it has in al lother respects complied with the laws of both states respecting the licensing and regulation of motor bus traffic for hire.

Affiant further says that said company was lawfully operating its busses over fixed routes as above described upon

regular schedules upon Hohman Street and Sibley Street in the town of Munster and the city of Hammond for a period of ninety (90) days immediately prior to the taking effect of an act of the General Assembly approved March 4th, 1925, being Chapter 46 of the published laws of the year 1925, and has since been continuously engaged in such operation. That within thirty (30) days after said act was in effect the company filed and submitted to the Public Service Commission of the State of Indiana, its application for a certificate of convenience and necessity to continue its operation over said streets and highways of said state. That said application is still pending before said body and the company has done all it could do to acquire said certificate of convenience and necessity and to make its operation over the highways of the state and the streets if the city of Hammond, in all respects legal.

36 Affiant further says that Ordinance No. 1945 of the city of Hammond, adopted May 23rd, 1925, makes it unlawful for the Farina Company to stop any of its vehicles for the purpose of receiving or discharging its passengers upon any street, alley or public place within the city of Hammond, with the proviso that the Board of Works may for any period not exceeding six months or successions thereof permit such operation on certain streets named in said ordinance. That Hohman Street is not so named. Said street runs north and south through the town of Munster into the city of Hammond parallel to and one block east of the state line. That said street is the only street by which the company can get into the city of Hammond except by way of Calumet Avenue, a north and south street one mile east of Hohman, or Columbia Avenue, a north and south street one and one-half miles east of Hohman Street. Under said Ordinance No. 1945 the Board of Works is not authorized to grant a permit to any company to come in over Calumet Avenue and if the Farina Company came in over Columbia Avenue it would have to route its busses several miles out of the way and travel through a sparse and unprofitable district. Affiant further says that Hohman Street is well paved and is the main artery through the residence district of said city of Hammond and for a distance of three (3) miles from the south limits of said city to the business district is not congested and the operation of the plaintiff's busses over said three miles to the business district would not create conges-

tion or unsafe conditions to the public. Notwithstanding
37 these facts, Ordinance No. 1945 makes it impossible for the company to stop at any place on said street to take on or let off passengers and in effect makes impossible operation over said street.

Affiant further says that on the 25th day of May, 1925, the plaintiff company filed its written application with the Board of Public Works of the city of Hammond for a permit to operate over all the streets described in Section 2 of said ordinance. That after taking the matter under advisement said Board did on the 12th day of June, 1925, decline to grant said permit, but offered the company a permit for a period of thirty (30) days to stop its busses to take on and let off passengers for intercity business on the following streets: On Steta Line Street from the south city limits to Rimbach Avenue; on Rimbach Avenue from State Line Street to Ann Street; on Ann Street from Rimbach Avenue to Russell Street; on Russell Street from Ann Street to State Line Street.

Said permit so offered directed that the plaintiff's busses on entering the city at the south on Hohman Street should turn west on Standard Avenue to State Line Street and return by the same route. Under this offered permit the company was denied the opportunity to proceed to its depot and terminus on Sibley Street. It was required to operate on State Line Street which is poorly paved and out of the course of travel convenient to the company's passengers.

It was required to use as its terminal certain residence
38 streets in said city, namely, Rimbach Avenue, Ann Street and Russell Street, where it has and can obtain no depot with shelter and conveniences to its passengers. If the company used said location at Rimbach Avenue, Russell Street and Ann Street as its terminal, its passengers would be discharged several blocks away from its former terminus and depot and outside of the business district of the city.

Under the ordinance and said offered permit the company is permitted to run over Hohman Street from the south city limits of Hammond to Standard Avenue, a distance of approximately one and one-quarter miles and at Standard Avenue is required to turn west to State Line Street. It is not permitted to stop to take on or discharge passengers on Hohman Street from the south city limits to Standard Avenue, notwithstanding many of its passengers desire to alight or want to take passage on said street and in said district.

Said district is the growing residence district of the city of Hammond and under said ordinance and permit any passengers living on Hohman Street between the south city limits and Standard Avenue are required to proceed a distance of approximately two (2) miles to Rimbach Avenue and Ann Street to take one of the company's busses, returning over the same route, if the desire to go to Munster, or any of said towns in Illinois. Because of the strictures above referred to, it was and is impossible for the company to operate under said ordinance and offered permit without great financial loss to itself and inconvenience to the traveling public.

Affiant further says that upon his investigation and knowledge there is only one motor company operating
39 in said city of Hammond under what purports to be a contract to which said city is a party. That the company is the Calumet Motor Coach Company which entered into a contract to operate motor bus service over all the streets of said city on the 8th day of September, 1924. That said company operates the same type and size of bus as does the plaintiff company and contributes as much or more to the congestion of the business district of said city, than does this plaintiff company. Said Calumet Motor Coach Company is permited to operate its busses over all the streets restricted and prohibited in said Ordinance No. 1945 and to use the down-town business streets of said city as its terminal.

And further affiant sayeth not.

(signed) CHARLES W. GIFFORD

Subscribed and sworn to before me this 15th day of June, 1925.

(signed) MOLLIE KRIEGER
(Seal) *Notary Public*

My commission expire November 5, 1925.

86 IN THE DISTRICT COURT OF THE UNITED STATES

District of Indiana

Farina Transportation Co.
—*vs*—
City of Hammond
} No. 26 In Equity

TESTIMONY OF CHARLES W. GIFFORD GIVEN ON THE 15TH DAY OF JUNE, 1925

87 CHARLES W. GIFFORD called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examiantion by Mr. Crumpacker.

Q. Will you state your name?
A. My name is Charles Walter Gifford.
Q. Where do you live?
A. Gary, Indiana.
Q. What connection, if any, do you have with the Farina Bus line, the plaintiff in this case?
A. Superintendent.
Q. I will ask you to state if this map, Plaintiff's Exhibit 5, is an accurate map of the City of Hammond and surrounding territory?
A. I believe that it is.
Q. Showing the principal streets and the boundaries of the City of Hammond and the surrounding towns.
A. Yes, sir.
Q. And showing the streets over which the plaintiff company has operated from Illinois into Hammond, the State of Indiana.
A. Yes, sir.
Q. I will ask you to state what there is on this map, Exhibit 5, indicating the route on which the plaintiff is now operating in the City of Hammond.
A. I have traced in pencil our route from Chicago to Chicago Heights, in so far as is practical on this map,
88 down Ridge Road to the junction of Ridge Road and Hohman Street, and in on Hohman Street to the junction

of Hohman and Sibley Streets, when we turn easterly to what is known as the store of George Dixon, where we maintain a waiting room and ticket depot for our patrons.

Q. The waiting room and ticket depot is how far east from Hohman Street?

A. Approximately a half a block, I should judge.

Q. You may state what indicates it on this map.

A. I have indicated the station by a black dot.

Q. Do you know where the south city limits of Hammond is where Hohman Street crosses it?

A. I believe the dividing line is the Little Calumet River.

Q. That divides Hammond from Munster?

A. Yes, sir.

Q. I will ask you to state whether the operation or the routing of your buses, as indicated by this line here, when you cross the boundary line between Hammond and Munster, whether or not from there on down to your depot that route is the most direct route to your depot?

Mr. Peters: I object. I think the map speaks for itself. That is a direct route.

Mr. Crumpacker: I want to show that it is the most direct route. There is no other street from the boundary line down to Sibley that is as direct as Hohman Street is.
89 In fact, there is no other street from Munster on in at all. The only other one is Calumet Avenue, one mile to the east, which, of course, would not be as near and direct.

The Court: Let him answer the question. Is it the most direct?

A. I know it is the most direct route into our depot in the City of Hammond.

Q. This waiting room and depot on Sibley street, that you refer to, is that east or west of the Monon tracks in Hammond?

A. It is west of the Monon tracks in Hammond.

Q. I will ask you to state whether or not in operating to that depot, using the depot as part of your operation, you did so under direction and suggestion of the Board of Works of the City of Hammond?

A. We did.

Q. Now, State Line street is where with reference to Hohman Street?

A. State Line runs directly parallel with and in the same direction as Hohman Street, north and south, within one block of Hohman Street.

Q. Which way from Hohman Street?

A. Westerly.

Q. And how far south is State Line street opened up for us?

A. I believe it is down to 15th street in Calumet City, if my memory holds correctly. That is as I remember
90 it. Beyond that point, I may state, the road is in such condition—

Q. It is open up to 15th Street.

The Court: Beyond that point, which way do you mean, north or south?

A. South of 15th Street the street is unpaved.

Q. Do you know whether it is opened at all south of 15th street?

A. It is opened up, yes, there is a passage way through there, very rough, unpaved, and over the Little Calumet River is a bridge over which trucks of three tons, or two tons capacity—in that vicinity—are prohibited to move, and do so at their own risk.

Q. May I mark 15th street with a cross? North of 15th is State Line street open?

A. Yes, sir.

Q. How far north?

A. I couldn't answer that except in so far as its location to the black dot dot on my map is concerned. I don't know how much farther it goes.

Q. It is open, in fact, all the way north to the Michigan Central tracks, as indicated on this map, is it not?

A. My knowledge only goes to this hospital here. I am not sure about the Michigan tracks.

Q. Do you know whether it is opened up as far as Rimbach Avenue?

A. Yes, sir.

91 Q. From 15th street north, how is that street up to Standard Avenue with respect to its condition for the purpose of bus travel?

A. If I remember correctly, it is paved but very, very rough. It would be considered impractical to operate buses over it.

Mr. Peters: I move to strike out "it would be impractical."

Mr. Crumpacker: Q. It is very rough from 15th how far north?

A. I should think to—if I could see the map, I could answer more intelligently. North of Standard, I should say—

The Court: You say it is very rough as far as Standard?
A. Yes.
Mr. Crumpacker: That answers the question. Q. Here is Standard. Mark that with a circle. Down to there it is open, but very rough. From there on north it is all right.
A. It is in fair condition, but it is not a good pavement by any means.
The Court: How is the pavement on Hohman street?
A. Hohman Street is well paved. It is very good, very wide street.
The Court: How wide?
A. I don't know the dimensions of the street. I should imagine—well, I couldn't answer how many feet, but it is a very wide street—a boulevard, in fact.
92 Mr. Crumpacker: That is all.

Cross-Examination by Mr. Peters.

Q. You stated that your depot at the candy store on Fayette Street was fixed by the Board of Public Works?
A. Sibley street.
Q. Sibley street. When was that done?
A. I don't remember the date. Why I answered it in that manner—I appeared before the Board of Public Works in relation to a permit to enter our property at the South Shore station, and at that time Mr. Swanson, chairman of the Board of Public Works, said that our station, as marked out by the Board of Public Works, was at George Dixon's store.
Q. You operate a portion of the Gary Street Railway also?
A. Yes, sir.
Q. Might you not have been talking about that?
A. No, this was in relation to buses.
Q. You are sure of that?
A. I am positive of that, sir.
Q. When was that?
Mr. Crumpacker: That they designated the depot?
The Witness: Why, it was approximately one month ago. The date has escaped my memory.
Q. Of course, you would not attempt to say that the Board had actually entered an order. You never saw an order
93 fixing that as your depot?
A. No, sir.
Q. For bus operation?

A. No, sir; I personally never saw one.

Q. You spoke of your depot on Sibley Street. The fact is that your coaches stop in the street, do they not?

A. Yes, sir.

Q. And take on and discharge passengers in Sibley Street?

A. On Sibley Street, yes, sir.

Q. That is, between the curbs of that street?

A. Yes.

Q. Sibley Street has two tracks on it between the Monon tracks and Hohman Street?

A. Yes, sir.

Q. Approximately how wide is Sibley Street?

A. Oh, I should say it was 30 feet, a rough guess.

The Court: You mean from curb to curb?

A. From curb to curb, yes, sir.

Q. And, of course, there are taxi-cab stations on Sibley street also?

A. I don't know whether there are taxi-cab stations. I know they park where there are no parking signs.

Q. You have seen taxi-cabs standing there.

A. Yes, sir, I have.

Q. And also the Gary Street Railway Company operates street cars at frequent intervals on Sibley Street, and they stop at this same place.

A. Just beyond Dixon's store, perhaps 25 or 30 feet.

Q. That is the end of operation?

A. That is the end of the Gary Street Railway Company street car operation, yes, sir.

Q. The cars coming in there stop a certain length of time.

A. Just long enough to change ends.

Q. For how long would you say?

A. I should judge two or three minutes. If they are ahead of time, posisbly longer than that.

Q. How many cars do you operate in there during 24 hours?

A. Eighteen hours of operation, I believe, four cars per hour.

Q. They are the usual size street cars?

A. Yes, sir.

Q. It is a fact that a bus cannot pass between one of those cars and cars parked at the curb.

A. I believe a bus can pass. I believe I have seen it.

Q. You are not sure about the dimensions of the street.

A. I am not sure about the thirty feet, no.

Q. On one corner of Sibley and Hohman is one bank and on the other corner is another bank.

A. Yes, sir.

Q. Across the street is a large department store.

A. Yes, sir.

95 Q. Down at the intersection of Sibley and the Monon railroad is the Monon station.

A. Yes, sir.

Q. Down farther on Sibley street, at the intersection of the Nickle Plate, is the Nickle Plate station.

Q. And persons desiring to go to the Monon or Nickle Plate stations by taxi-cab or other vehicles go down Sibley Street, that is, coming from Hohman Street.

A. It would be the most direct route.

Q. Are you familiar at all with the amount of traffic that the Monon brings into the City of Hammond?

A. Only through observation. I don't know any figures.

Q. It is a heavy traffic.

A. It is a heavy traffic, yes, sir.

Q. In other words, the Monon trains carry a great many passengers between Chicago and the City of Hammond.

A. Yes, I think that is true.

Q. You don't mean to say that you have private grounds on Sibley street on which you stop your coaches?

A. No, we don't have private grounds on which we stop.

Q. In other words, your station consists of a place to sell tickets and a waiting room in a candy store and a place out in front of the candy store, or near to it, where your coaches stop?

A. Yes, sir.

96 The Court: See if I understand this correctly—you are the superintendent of the Gary Street Railway Company?

A. The Gary Street Railway Company and the Farina Bus Line Company.

The Court: Both?

A. Yes, sir.

The Court: This Gary Street Railway Company has two tracks on this Sibley street?

A. Yes, sir.

The Court: Their station is also on Sibley?

A. Yes, sir.

The Court: Then the Farina bus Line—

A. Is on Sibley Street, right close to the street car station, within 30 or 40 feet of the end of our line.

The Court: You are manager of both companies?

A. I am superintendent.

The Court: Of both the street car company and the bus line?

A. Yes, sir.

Mr. Peters: That is all.

Redirect Examination by Mr. Crumpacker.

Q. As to Hohman Street, throughout its entire length, from the south city limits where you come in, all the way down to Russell, what is the fact as to whether that street is approximately an 80-foot street, if you know.

A. Why, it is very wide. I should imagine it approximates that, yes, sir.

97 The Court: You mean from curb to curb?

Mr. Crumpacker: Yes.

Q. You know that it was recently widened from Russell Street south to Carroll Street on the east side?

A. Yes, sir; it has been widened—partially completed, I believe.

Q. Now, on that street, from Russell Street south, is a single track of the Hammond, Whiting line, is there not?

A. Yes, sir.

Q. Down as far as Conkey Avenue?

A. Yes, sir.

Q. Where it turns east.

A. Yes, sir.

Q. What is the extent of the traffic on Hohman Street from the point where it crosses the river on north to Russell Street, generally?

A. I should say it is very light for an 80 foot street.

Q. And the south part of Hohman Street, that is from Conkey Avenue south to the river—rather from Standard Avenue south to the river, what is the fact as to whether that is open territory or closely built up territory.

A. Very open territory.

Q. What is the fact as to whether in that territory, generally speaking, there are many houses now being built?

A. There are considerable number of houses now being built.

98 Q. That is a residence district.

A. Yes, sir.

Q. What is the fact as to whether there is any congestion

resulting from the operation of your buses—whether it is confined to Sibley Street, that part that lies between the Monon tracks and Hohman Street, where your depot is.

A. I don't quite grasp the question.

Q. Is there any congestion of traffic under your operation on Hohman street from the south city limits north as far as Russell Street?

A. I should say there was no congestion there caused by our buses.

Q. Do you run north of Sibley Street at all, your buses?

A. We have run one bus to the South Shore depot every four hours; that is still running.

Q. That is still running?

A. Yes, sir.

Q. You operate that—

A. Pardon me, just a minute. You refer to the Farina Company?

Q. I am referring to the Farina Company.

A. No, sir; we do not.

Q. The district that is bounded by State Line on the West, Ann Street on the east, Rimbach Avenue on the north, that block, do you have that in mind?

A. Yes.

Q. Will you state whether that block is in the resi-
99 dence district or business district of Hammond?

A. Very much in the residence district, I should judge.

Q. I think that is all.

Recross Examination by Mr. Peters.

Q. Hohman Street is the main north and south street of the city, is it not?

A. I should call it so, yes. There are others.

Q. You know from observation that the heaviest traffic in the city of Hammond is on Hohman Street.

A. I wouldn't want to say that.

Q. Where is it if it isn't there?

A. I think Calumet Avenue probably carries as much.

Q. Isn't it a fact that all the important business house in the city of Hammond are on Hohman Street?

A. If you refer to the business houses—I thought you meant traffic. There are no street cars on Calumet Avenue. For that reason I thought traffic was heavier, because I myself detour on Calumet Avenue.

Q. In fact, most people who are in a hurry to go through Hammond travel on Calumet Avenue rather than on Hohman Street.

A. I should imagine they would.

Q. In other words, Hohman Street is the busiest street, north and south street in Hammond.

A. In my opinion, Calumet and Hohman streets are about the same.

100 Q. But Hohman Street is a congested street.

A. Yes, sir.

Q. Of course, you are not prohibited by this ordinance from operating south on Russell Street on Hohman Street, are you?

A. I don't like to answer that question because I am not familiar with that ordinance.

Mr. Crumpacker: They are not permitted to go on Hohman Street at all under the ordinance except up to Standard Avenue from the south, and there you can't stop or take on passengers. He is prohibited from the entire length of Hohman Street north of Standard Avenue.

Mr. Peters: (Q) Now you have never received any written permit from the Board of Public Works, that is, the Farina Company, to use this place as a station, have you?

A. I wouldn't want to say that the company never has. I have never seen it.

Q. Do you remember going to the city attorney and the city attorney saying that they turned you down, or something of the sort, in relation to that matter? Do you remember asking for such a permit?

A. I have been connected with this company eight weeks. I never personally asked for a permit. I believe a permit was asked for.

Mr. Crumpacker: But you were present at some session of the Board when orally it was stated by the Board or

101 somebody on it that you could use that as your station.

A. Mr. Swanson said that was our depot, so appointed by the board.

The Court: Who is Mr. Swanson?

A. Chairman of the board of public works of the City of Hammond.

Mr. Crumpacker: That is all the evidence I have to submit.

40 (PLAINTIFF'S EXHIBIT TWO)

Ordinance ~~No.~~ 1897 --

An Ordinance Approving A Certain Franchise, Granting Unto Harold E. Miner, Trustee, His Successors And Assigns, The Right To Maintain And Operate In And Upon, Along And Across The Streets, Alleys, And Other Public Places Within The City Of Hammond, Motor Busses, Coaches And Omnibuses For The Carriage And Accommodation Of Passengers For Hire.

Whereas, heretofore, to-wit: on the 29th day of August, 1924, the City of Hammond, Indiana, by and through its Board of Public Works, entered into the following contract and agreement with Harold E. Miner, as Trustee, to-wit:

This Indenture Of Agreement made and entered into this 7th day of July, 1924, by and between the City Of Hammond, Indiana, by its duly authorized Board of Public Works, hereinafter known as the City, and Harold E. Miner, hereinafter known as Trustee, Witnesseth:

Section 1. That for and in consideration of the execution of this contract, and the performances of the promises as hereinafter set forth on the part of the Trustee, and subject to all the provisions, conditions, requirements and limitations hereof, the said City does hereby consent, permit and authorize the said Trustee, his successors and assigns,
41 to maintain and operate in, upon, along and across all the streets, alleys and public places under the control and within the limits of the City of Hammond, Indiana, or over which said City may hereafter have jurisdiction or control, motor busses, coaches or omnibuses for the accommodation and carriage of passengers for hire, and in connection therewith, said Trustee may cause said motor busses, omnibuses or coaches to make all necessary or convenient stops upon said streets, alleys and public places for the receiving and discharging of passengers, at such places as may be reasonable, said Trustee or his assigns to operate his said motor busses, omnibuses or coaches over such boulevards and streets as are hereinafter designated, and in addition thereto, over any or all streets, alleys and public places as may be deemed advisable by said Trustee for such operation, or over such streets, alleys or public places as may be convenient or neces-

sary to operate in connection with and incidental to the routes as hereinafter designated.

Section 2. The Trustee, his successors and assigns, hereby agree to cause to be operated motor busses at the times and intervals as the necessities of the traffic require, over the following alleys, streets and public places, in the city of Hammond, Indiana, and on the routes as herein designated, to-wit:

Route 1. State and Hohman to Highland; Highland to Columbia; Columbia to Morton Avenue; Morton Avenue to Calumet; Calumet to Highland; return to State and Hohman.

42 Route 2. State and Hohman to Calumet; Calumet to Standard; Standard to Van Buren; Van Buren to Kenwood; Kenwood to Hohman; Hohman to State and Hohman.

Route 3. State and Hohman to Hoffman; Hoffman to Sheffield; Sheffield to Huehn; Huehn to Calumet; Calumet to Chicago Avenue; Chicago Avenue to Ash; Ash to 150th; 150th to Calumet; Calumet to State; State to State and Hohman.

Route 4. State and Hohman to Calumet; Calumet to 150th; 150th to city limits east and return over same route; and over such additional and further routes as may be established from time to time, according to the necessities of the traffic.

Section 3. Said right to maintain or operate said motor busses shall be held and enjoyed by the Trustee, his successors and assigns, for a term of twenty-five (25) years from the date upon which operation is commenced under this ordinance by the Trustee, his successors and assigns.

Section 4. The Trustee, his successors and assigns shall convey passengers on it routes within the city of Hammond, at a fare not exceeding ten cents (10c) per passenger for one continuous trip one way on the several different routes in said City and shall issue transfers on its lines in said City so that one fare shall entitled a passenger to one continuous trip from one point on any route in the City of Hammond to any other point reached by any other route in the City, whether the same requires one transfer or more; provided, that

43 such transfers shall be good only on the first bus departing from such junction point after the same is issued and said transfers are not transferable, then such transfer shall be honored by the next departing bus; provided however, that children under the age of seven (7) years and accompanied by their parent or guardian, shall be entitled to ride free on said busses; provided further, that children going

to and from any public or parochial school in the City of Hammond to attend said school, shall be entitled to purchase at the office of the Company, books of tickets, in either ten, twenty or thirty fares at the rate of five cents (5c) for each continuous trip, as aforesaid; provided further, that uniformed policemen, firemen, while in uniform, and carriers of United States mail, in uniform, shall be entitled to ride free of charge on said busses.

If and when the Trustee extends his motor bus service to the cities of Whiting and East Chicago, Indiana, and Calumet City, Illinois, either or any of them, the single continuous fare, including transfer, if any, between any point on his line in the city of Hammond and any point on said lines in said other cities, either or any of them, shall not exceed the then existing fare for such trip within the limits of the city of Hammond.

Section 5. The Trustee, his successors and assigns shall pay to the City for the privilege hereby granted, the following sum of money:

During the term hereof, an annual sum which shall be equal to three per cent (3%) of the gross annual receipts
44 derived from operation upon the boulevards and streets in the City of Hammond. The gross annual receipts derived from the operation upon the streets and boulevards of the City of Hammond shall be that proportion of the total gross receipts of the Trustee, his successors and assigns, from all sources within the limits of Lake County, Indiana, as the number of bus miles operated per annum over streets and boulevards under the jurisdiction of the City, bears to the total number of bus miles operated by the Trustee, his successors and assigns, per annum within Lake County, Indiana.

The annual charges shall commence from beginning of operation herein. All annual charges as above provided shall be paid to the City semi-annually on the first days of September and March in each year. The payment to be made September first shall, in each instance, be for the amount due to July first last preceding, and the payments to be made March first shall, in each instance, be for the amount due to January first last preceding; provided, that the first semi-annual payment shall be only for that proportion of the first semi-annual charge, as the time between the date upon which operation is begun by the Trustee, his successors and assigns, and the date of the next semi-annual payment thereafter shall bear to the whole of one-half year. None of the pay-

ments to be made to the City under the terms of this ordinance shall be considered in any manner in the nature of a tax, but payments shall be made in addition to any and all taxes of whatsoever kind or description now or hereafter required to be paid by any ordinance of the City or any law of the State of Indiana. The moneys thus derived or as much thereof as may be necessary, shall be used by the City in the maintenance and repair of streets and public places. The Trustee, his successors and assigns in addition thereto, shall keep or cause to be kept the streets, etc. over which busses are operated, free of snow in the winter months so that busses and other vehicles may move therein.

Section 6. The amount of money hereby agreed to be paid as and for the rental for the use of the streets as herein provided, shall be paid continuously for the term of this leasehold, and so long as operation continues under and by virtue of the terms hereof; provided, that if, and in the event a franchise is granted by the City to any person, firm or corporation, which is in a business competitive directly or indirectly, with the Trustee or his assigns, then and in that event, upon the granting of such competitive franchise, the amounts herein agreed to be paid shall, by the granting of such franchise, be released and rescinded and the Trustee and his assigns shall then and there be relieved from the payment thereof.

Section 7. Upon the termination of the permission and authority hereby granted by the expiration of the twenty-five (25) year term, in case the right of the Trustee, his successors and assigns is not renewed, or by any forfeiture of the right of the Trustee, his successors and assigns, at an earlier date, in accordance with the provisions of this ordinance, the City shall have the right to purchase all of the tangible property of the Trustee, his successors and assigns, used for the operation of motor busses under the provisions of this ordinance, except such part thereof if any, as said Trustee, his successors and assigns shall be prevented from selling to said City by some valid obligation assumed prior to the psasage of this ordinance, at a price representing the fair value of such property, determined either by agreement or by condemnation proceedings, if the same shall be authorized by law for such purpose, or by arbitration as herein provided.

If the City shall desire to purchase such property, it shall

give to the Trustee, his successors and assigns, notice, in writing, of its intention so to do, not less than one (1) year prior to the termination of the right of the Trustee, his successors and assigns, by the expiration of the original twenty-five year term, but if the permission and authority granted to the Trustee, his successors and assigns, shall be forefited at an earlier date in accordance with the provisions of this ordinance, the City shall be entitled to proceed toward the purchase of such property as herein provided, immediately upon giving notice, in writing, to the Trustee, his successors and assigns, after such forfeiture, but not later than three (3) months thereafter. If the City desires to purchase the property of the Trustee, his successors and assigns, but the City and the Trustee, his successors and assigns fail to agree upon the
47 value to be paid therefor, within sixty (60) days after written notice from the City to the Trustee, his successors or assigns, of its intention to purchase such property, the City shall be entitled within four (4) months from the date of such notice, in writing, of its intention to purchase such property, either to begin condemnation proceedings for the determination of the value of the same, in case condemnation proceedings for such purpose shall then be authorized by law, or to take steps toward the submission of the matter of such fair value, to arbitration in the manner herein provided. If condemnation proceedings shall be begun, the procedure and rights of the parties thereunder shall be governed by the law applicable thereto. If the matter of such fair value shall be submitted to arbitration, the procedure shall be as follows:

Not less than fifteen (15) days after written notice from the City to the Trustee, his successors and assigns, of its intention to purchase such property, the Trustee, his successors and assigns shall choose one disinterested person as an arbitrator and notify the City in writing, of his choice; within not less than fifteen (15) days after such notice in writing, to the City of the selection of such arbitrator by the Trustee, his successors and assigns, the City shall choose one disinterested person as an arbitrator and notify the Trustee, his successors and assigns, in writing, of its choice. If either the Trustee, his successors and assigns, or the City fails to choose an arbitrator and give written notice of its choice with-
48 in the time herein limited, a disinterested person may be selected as an arbitrator in its behalf by the other party (that is, the City or the Trustee, his successors and assigns,

as the case may be). The two arbitrators thus selected shall choose a third arbitrator and give written notice of their choice to the Trustee, his successors and assigns, and the City, not less than thirty (30) days after the selection of the arbitrator by the City. In the event that the two arbitrators first selected are unable to agree upon the selection of such third arbitrator, and fail to give written notice of their choice within the time limited herein, the Judge of Room One of Superior Court of Hammond may appoint such third arbitrator, upon application, in writing, by either the Trustee, his successors and assigns, or the City. The three arbitrators immediately upon their election shall begin the determination of the fair value of the property of the Trustee, his successors and assigns shall proceed with such determination as expeditiously as may be, and shall determine and report, in writing, to the Trustee, his successors and assigns, and the City, the fair value to be paid for the property of the Trustee, his successors and assigns, upon the basis above explained, within a period not longer than three (3) months after the date of their selection. A majority of such arbitrators may exercise the powers of such board of arbitrators and the decision under oath of such arbitrators or of a majority thereof, shall be final and conclusive as to the fair value of such property.

49 Any vacancy in such board of arbitrators caused by death, resignation, refusal to serve or any other cause, shall be filed within ten (10) days after notice, in writing by the Trustee, his successors and assigns, or the City, in the same manner that is provided for the original selection of such arbitrators. The determination by such arbitrators of the fair value of the property of the Trustee, his successors and assigns, may be based upon their own experience and upon such information as they may obtain by inquiries and investigations without the presence of either party. They shall have the right to examine any of the books of the Trustee, his successors and assigns, and their officers under oath. The compensation and expenses of the arbitrators in case of arbitration shall be borne jointly by the City and the Trustee, his successors and assigns, each paying one-half thereof.

Section 8. No assignment, lease or sub-lease of the rights and privileges hereby granted, or any part thereof, or any of the routes mentioned herein or of any part thereof, shall be valid or effectual for any purpose unless the said assignment, lease or sub-lease shall contain a covenant on the part

of the assignee or lessee that the same is subject to all the conditions of this ordinance, and that the assignee or lessee will assume and be bound by all the terms and conditions, and especially said conditions as to payment, anything in any statute or in the charter of such assignee or lessee to the contrary notwithstanding; and that the said assignee or lessee shall waive any more favorable conditions created by
50 such statute or its charter, and that it will not claim by reason thereof, or otherwise, exemption from liability to perform each and all of the conditions of this ordinance.

Section 9. The Trustee, his successors and assigns, shall commence operations hereunder within sixty (60) days after passage of an ordinance approving this contract by the common council of the City of Hammond; provided that such period may be extended by the City for a period or periods not exceeding the aggregate three (3) months; and provided further, that when the commencement of said operations shall be prevented by legal proceedings in any court or by works of public improvement or by other causes not within the control of the Trustee, his successors and assigns, the time for the commencement of such operation may be extended for the period of such prevention, but no delay shall be allowed for legal proceedings unless such proceedings shall be diligently prosecuted by the Trustee, his successors and assigns; and provided further, that in no case shall such delay be deemed to begin until the Trustee his successors and assigns, shall have given written notice to the City of such legal proceedings or other occasion of delay, and delivered to the City, copies of any injunction or other orders, and the papers upon which the same shall have been granted, and unless upon request of the City, the Trustee, his successors and assigns, shall in writing consent that the City may intervene in any such proceedings.

51 Section 10. Nothing herein contained shall be construed as permitting the Trustee, his successors and assigns, to erect any structures whatever upon boulevards or streets in the City, and the Trustee, his successors and assigns shall not construct or maintain any fixtures or structure in such boulevards and streets unless especially authorized by the City.

Section 11. All vehicles which may be operated pursuant to this ordinance shall comply with the following general requirements:

1. They shall be propelled by power generated or con-

tained within the vehicle itself or by storage battery, or other motive power, but no power shall be used which will, in its generation or use, produce smoke or noxious odors sufficient, in the opinion of the City or its authorized representative, to constitute a nuisance.

2. The maximum weight, including fuel, water, oil or any other material or any accessories used in operation, shall not exceed twelve thousand five hundred (12,500) pounds.

3. The maximum width shall not exceed eight (8) feet.

4. The maximum length shall not exceed twenty-seven feet, six inches (27′ 6″).

5. They shall be designed and constructed in a manner which will permit ease and freedom of movement under all conditions.

6. The distribution of eight on axles, length of wheel and other features of design shall be such as to avoid skidding, as far as reasonably possible, and shall be such as 52 to permit easy steering and control.

7. They shall be fitted with brakes reasonably capable of stopping and holding same under all conditions.

8. All parts shall be so constructed that no undue noise or vibration shall result from operation.

Section 12. No motor bus or omnibus shall be operated pursuant to this ordinance, unless there shall be painted thereon in letters sufficiently large to be clearly visible for a distance of seventy-five (75) feet:

(a) The name of the Trustee, his successors and assigns, owning and operating such vehicle.

(b) The number of the vehicle which is assigned to it.

Section 13. The destination of each omnibus or motor bus shall be plainly indicated on the front of the vehicle, and shall be illuminated at night.

Section 14. The Trustee, his successors and assigns, shall not permit any advertising on the outside of any motor bus, other than that relating to the business of the Trustee, his successors and assigns.

Section 15. The enclosed lower portion of all motor busses or omnibuses which are operated on said routes shall be heated during the cold weather, in conformity with such laws and ordinances as are now in force affecting surface railway cars or such reasonable laws and ordinances affecting motor busses or omnibuses as may hereafter, during the term of this ordinance, be in force, or as may be required by the City.

53 Section 16. The busses or motor coaches operated by the Trustee, his successors and assigns, hereunder, shall have adequate and sufficient illumination at night, both for the purpose of aiding passengers occupying said busses and also aiding drivers of other vehicles, to avoid busses. They shall also carry light or lights as may be required from time to time, by the laws of the State of Indiana, relating to the operation of motor vehicles.

Section 17. All reasonable laws and ordinances affecting the operation of motor busses or omnibuses now in force or which may be in force during the term of this ordinance, shall be complied with by the Trustee, his successors and assigns. The Trustee, his successors and assigns shall also comply with and enforce the carrying out of any orders or regulations which may be issued by the City, designed for the protection of persons or property, or for the comfort and health of the public. The Trustee, his successors and assigns shall comply with all the laws and ordinances of the City relating to traffic.

It is understood that the question of where stops shall be made for taking on and letting off passengers, is reserved until the Trustee, his successors and assigns, are operating hereunder, at which time the City and the Trustee, his successors and assigns, will decide on what will best meet the requirements of the situation.

Section 18. Motor busses shall be run on the routes herein designated between the hours of 5 A. M. and 12 midnight and such other routes as may be established from time to time
54 between such hours and at such intervals as the necessities of traffic require.

Section 19. It is understood that the Trustee, his successors and assigns shall operate, pursuant to this ordinance, the routes herein specified, but should vehicular traffic be diverted from any portion of any of the boulevards or streets constituting said routes, because of fires, parades or because of any other event which will close the street to vehicular traffic temporarily, then the Trustee, his successors and assigns may use such other boulevards or streets as are necessary to continue its operation. If, however, for any reason any of the boulevards or streets in which operation is hereby specified shall be closed to vehicular traffic for a longer period than twenty-four (24) hours then the Trustee, his successors and assigns, shall use his discretion for the operation upon other boulevards or streets for the period during which such boulevards or streets may be closed.

Section 20. The Trustee, his successors and assigns shall, at all times, keep accurate books of account of the gross receipts from all sources within the limits of operation provided for in this ordinance, and shall, on or before March first of each year, make a verified report to the City of the business done by the Trustee, his successors and assigns, for the year ending December thirty-first next preceding. Such report shall contain a statement of such gross receipts, the number of omnibuses in operation, the total miles in operation provided for in this ordinance, and such other in-
55 formation as the City may require. The City shall have access to all books of the Trustee, his successors and assigns, for the purpose of ascertaining the correctness of its report, and may examine his officers under oath.

Section 21. In case of any violation or breach or failure to comply with any of the provisions herein contained, the permission and authority herein granted may be revoked or forfeited, at the option of the City by resolution of the Common Council without proceedings at law or in equity; provided however, that no such action by the City shall be taken until the City shall give notice to the Trustee, his successors and assigns, to appear before it on a certain day not less than thirty (30) days after the date of such notice, to show cause why each resolution declaring the permission or authority revoked or forfeited, should not be adopted, and the Trustee, his successors and assigns, shall not have remedied such violation, breach or failure within said time. In case the Trustee, his successors and assigns, fail to appear, action may be taken by the City forthwith. Any false entry in the books of the Trustee, his successors and assigns, or false statement in the report to the City as to a material fact, knowingly made by the Trustee, his successors and assigns, shall constitute such a violation or breach or failure to comply with the provisions herein contained, as to warrant the forfeiture or revocation of the permission and authority herein granted. Noth-
ing herein contained shall affect the right of the Trustee,
56 his successors and assigns, to apply to a court of competent jurisdiction for review of any action of the City forfeiting the privilege or consent herein granted. If the Trustee, his successors and assigns, shall fail to commence operations hereunder within the time herein limited, and such failure shall not be occasioned by legal proceedings, works of public improvement, or from some other cause or causes not within the reasonable control of the Trustee, his successors

and assigns, then unless the Trustee, his successors and assigns shall commence such operations as herein provided, this ordinance may, at the election of the City, be terminated.

Section 22. The Trustee, his successors and assigns, herein covenant and agree to carry in a first class and solvent stock insurance company, adequate and full coverage against injuries to person or property arising out of its operation hereunder.

Section 23. If the Trustee, his successors and assigns shall fail to give reasonably adequate public service at the rates herein fixed, or fail to maintain his equipment as herein provided in good condition throughout the whole term of this ordinance, the City may give notice to the Trustee, his successors and assigns, specifying any default on the part of the Trustee, his successors and assigns, and requiring the Trustee, his successors and asigns to remedy the same within a reasonable time; and upon failure of the Trustee, his successors and assigns, to remedy such default within a reasonable time, the Trustee, his successors and assigns, shall, for each day thereafter during which the default or defect
57 remains, pay to the City the sum of Fifty ($50.00) Dollars as fixed or liquidated damages.

Section 24. It shall be conclusively deemed that this contract is made and is acceped with full knowledge on the part of the Trustee, his successors and assigns of the condition of the paving of the boulevards and streets; and the City shall not, during the life of this ordinance, be required to make any improvements or repairs to any such boulevards or streets called for by the Trustee, his successors and assigns, except to expend the sums provided herein on them.

Section 25. The Trustee, his successors and assigns shall assume all liability for damages to persons or property occasioned by reason of the operation of the motor bus or omnibus routes authorized by this ordinance, and it is a condition of this ordinance that the City shall assume no liability whatsoever to either persons or property on account of the same. In the event of any suits being brought against the City by reason of the operation of said motor busses, then the City shall promptly notify the Trustee, his successors and assigns of all such suits and deliver to the Trustee, his successors and assigns in due time all process, papers and other documents in their possession, relating to the same, and in such event, the Trustee, his successors and assigns shall, at their own expense, and in the name of the City, or otherwise, de-

fend all such suits and pay the full amount of any and all judgments which shall be entered against the City therein.

58 Section 26. The word "notice", "order" or "direction" wherever used in this contract, shall be deemed to mean a written notice or direction. Every such notice or direction to be served upon the Trustee, his successors and assigns, shall be delivered at such office in the City of Hammond, as shall have been designated by the Trustee, his successors and assigns, or if no such office shall have been designated, or if such designation shall for any reason become inoperative, shall be mailed in the City of Hammond by United States registered mail, postage prepaid, addressed to the Trustee, his successors and assigns, at said City of Hammond. Delivery or mailing of such notice or direction as and when above provided shall be equivalent to direct personal notice or direction, and shall be deemed to have been given at the time of delivery or mailing.

Section 27. The words "boulevards" and "streets" wherever used in this ordinance, shall be deemed to mean "all streets, avenues, highways, driveways, parks, parkways, concourses, boulevards, bridges, viaducts, tunnels, public places and any other land or property over which the City has control" encountered in the routes hereinabove described, and upon, in, along and across which authority is hereby given to the Trustee, his successors and assigns to operate motor busses or omnibuses.

Section 28. All motor busses operated under the permission and authority hereby granted shall be driven only by persons who shall comply with the laws of the State of Indiana and the ordinances of the City of Hammond, now or

59 hereafter in force in reference to chauffeurs' or drivers' licenses or the like; and no such motor busses shall at any time be operated at a greater rate of speed than shall from time to time, be permitted by law or by ordinances of the City.

Section 29. Nothing in this Ordinance contained shall be construed as depriving the City of the right of exercising any police power which it would have possessed or enjoyed had this Ordinance not been adopted. The enumeration herein of special requirements and specific regulations shall not be taken or held to imply the relinquishment by the City of its power to make other regulations or requirements, and the City hereby expressly reserves the right to make all regula-

tions which may be necessary to secure in the most ample manner, the safety, welfare and accommodation of the public, including among other things, the right to pass and enforce ordinances to protect the public from danger from the management and operation of said motor busses and insure the comfort and convenience of the people.

Section 30. The Trustee, his successors and assigns covenant and agree on their part and behalf to conform to and abide by and perform all the terms, conditions and requirements in this Ordinance fixed and contained.

Section 31. This contract shall be in force and take effect from and after its approval and passage by the Common Council of the City of Hammond.

Section 32. By the approval of this contract, the same shall be of the same force and effect as an ordinance, and all ordinances or parts of ordinances inconsistent or in conflict herewith shall be, by such approval of this contract, repealed.

60 Section 33. The City agrees to cause to be passed after the acceptance hereof, and the commencement of operation hereunder, valid ordinances preventing and prohibiting the operation of jitneys and the like on any streets, the operation upon which is hereby granted to the Trustee, his successors and assigns.

Section 34. It is understood and agreed by and between the Trustee, his successors and assigns, and the City, that the rates, routes and hours of service herein, shall be as herein specified, and the Trustee, his successors and assigns shall carry the public at the rates as herein required to be paid, and shall operate busses at the times as herein required to be operated, and over the routes as herein required; provided however, that if, and in the event either the City or the Trustee, his successors and assigns, shall at any time, come to the conclusion that the rates, routes, or hours of service herein are unreasonable, oppressive or inadequate, then either party may, upon thirty (30) days notice, change or order or require the rates, hours of service and routes to be changed, and if, and in the event, the party seeking the change cannot come to an agreement with the party against whom the change is sought, at the expiration of said thirty (30) days, then the matter shall be referred to a board of arbitrators, as provided in Section Six herein, who shall hear all the matters and things relevant to the controversy, that the parties hereto desire to produce, and shall have full power and authority

to make such orders relating to hours of service, rates
61 or routes, as may seem to them to be reasonable and just under the circumstances; that is to say, the parties hereto may, if possible, agree upon changes with reference to rates, routes and hours of service, but if they cannot agree, then the same shall be submitted to the said board of arbitration, and they shall, within ninety (90) days thereafter, determine the matter, enter an order concerning the same, and that such order so entered by them shall be full, final and conclusive upon the parties, and each party shall be bound to do and perform the things required by the order of said board of arbitration, the same as if written herein originally, until either party may subsequent thereto, file or cause to be filed, a notice of an additional charge, it being understood that changes may be made from time to time, and in the manner herein provided, in the terms of this contract, insofar as the same relates to rates, routes and hours of service.

It is further understood and agreed that if and in the event the City shall grant to any person, firm or corporation, any right, contract or franchise over the streets, alleys and public places in the City of Hammond, which in anywise directly or indirectly competes with the business of this Trustee, his successors and assigns, then and in that event, upon the granting of such contract or franchise, the Trustee, his successors and assigns herein may at their discertion, have the option to withdraw from any of the routes herein prescribed, charge different rates for public service (in no event
62 greater than a reasonable rate) or may reduce the frequency of operation, as may seem best to them.

Section 35. The Trustee, his successors and assigns shall, upon the adoption of this contract and ratification by the City Council, execute a good and sufficient bond to the City of Hammond, in the penal sum of Five Thousand ($5,000.00) Dollars, conditioned to faithfully carry out the conditions of this contract.

Witnesseth the parties this 29th day of August, 1924.

CITY OF HAMMOND, By
A. J. SWANSON (signed)
J. V. KEELER (signed)
F. C. DIETRICH (signed)
ITS BOARD OF PUBLIC WORKS
HAROLD E. MINER (Signed)
Trustee.

And Whereas, said contract has been submitted by said

Board of Public Works to the Common Council of the City of Hammond, Indiana, for its consideration and action;

Therefore:

Section 1. Be It Ordained by the Common Council of the City of Hammond, Indiana, that said contract as above set forth be, and it is hereby in all things confirmed and approved.

Section 2. This Ordinance shall take effect and be in full force and effect from and after its passage and approval
63 by the Mayor.

(signed) R. G. CONDE,
Presiding Officer.

Attest:
ARNOLD H. KUNERT,
City Clerk.

Passed by the Common Council and submitted to the Mayor for his approval this 5th day of September, 1924.

(signed) ARNOLD H. KUNERT,
City Clerk.

This ordinance is hereby approved this 8th day of Sept. 1924.

(signed) DANIEL BROWN,
Mayor.

Filed by the Mayor in the office of the City Clerk, after his approval thereon, this 8th day of September, 1924.

(signed) ARNOLD H. KUNERT,
City Clerk.

64 (PLAINTIFF'S EXHIBIT THREE.)

Ordinance No. 1898.

An Ordinance Amending Sections Two and Eleven of Ordinance No. 1750 Entitled "An Ordinance Regulating the Operation of Jitneys and Taxicabs Within the City of Hammond, Indiana, Defining the Term 'Jitney' and 'Taxicab' and Fixing the Rate of Fare, Providing the Conditions Under Which Jitneys May Be Operated Within Said City, Also Providing a Penalty for the Violation Thereof, and Declaring the Time Within Which Same Shall Take Effect."

Section 1. Be It Ordained by the Common Council of the City of Hammond, Indiana, that Section 2 of an Ordinance entitled "An ordinance regulating the operation of jitneys and taxicabs within the City of Hammond, defining the term 'jitney' and 'taxicab' and fixing the rate of fare, providing the conditions under which jitneys may be operated within said city, and declaring the time within which same shall take effect", being No. 1750 of said city, be and the same is hereby amended to read as follows, to-wit:

"Section 2. No person shall operate a jitney or taxicab within the city of Hammond, without having first obtained a license therefor, and filed a bond or indemnifying policy of insurance with the City Controller, as hereinafter provided. It shall be unlawful for any person, firm or corporation to operate a licensed jitney or taxicab within said city, except in compliance with the terms and conditions of this ordinance, but the provisions of this ordinance shall not affect, nor be applied to the use or operation of motor propelled vehicles operated under a franchise granted by the said city of Hammond."

65

Section 2. That Section 11 of said ordinance be and the same is hereby amended to read as follows, to-wit:

"Section 11. That any taxicab or jitney operator in taking on or discharging passengers shall stop at the nearest right-hand street crossing; provided that motor driven vehicles engaged in carrying passengers for hire between points within the city of Hammond and points outside of said city, shall have within said city, a terminus which, if upon a public street or other public place, shall be designated and set apart

to them by the Board of Public Works of the city, and shall not be permitted to stop to receive or discharge passengers at any other point in said city except at said terminus, unless such stop be for the purpose of discharging a passenger who was received by said motor vehicle at a point outside of the city, or receiving upon said vehicle a passenger whose destination is outside the city. Such motor vehicles doing business between said city and points outside thereof shall use the most direct feasible route between the city limits, at the point of entrance, and their designated terminal, such route to be selected and designated by the Board of Works of said city; provided further, that the terminus for motor driven vehicles entering the city from the south or west, shall
66 be at a point or points set apart by the Board of Public Works, west of Oakley Avenue and south of the right of way of the Michigan Central Railroad, where the same passes through the city of Hammond in an easterly and westerly direction, contiguous to Plummer Avenue, and such vehicles entering the city from the east or north, shall have a terminal or terminals designated by the said Board of Works, west of said Oakley Avenue and north of said railroad right of way; provided further, that except as above provided in this section, it shall be unlawful for the owner, operator or driver of any jitney, to stop for the purpose of receiving or discharging passengers on the following streets within the said city of Hammond, to-wit: On Hohman Street south of Gostlin Street; on Sheffield Avenue; on Calumet Avenue; on Michigan Avenue; on Highland Street; on Chicago Avenue; on Standard Avenue; on Conkey Avenue; on State Line Street; on Columbia Avenue; on Hoffman Street; on 150th Street; on State Street; on Sibley Street; on Fayette Street; on Rimbach Avenue; on Plummer Avenue; on 15th Avenue; but this limitation shall be effective only beginning with and during the time that transportation for hire by means of motor propelled vehicles commonly called motor coaches or motor busses, is offered to the public in said city, by any person, firm or corporation having a franchise with the city of Hammond so to do, and by virtue of such franchise.

(signed) R. G. CONDE,
Presiding Officer.

Attest:
(signed) ARNOLD H. KUNERT,
City Clerk.

67 Passed by the Common Council and submitted to the Mayor for his approval this 11th day of Sept. 1924.

(signed) ARNOLD H. KUNERT
City Clerk

This Ordinance is hereby approved this 12th day of Sept. 1924.

(signed) DANIEL BROWN,
Mayor.

Filed by the Mayor in the office of the City Clerk after his approval thereon, this 12th day of Sept. 1924.

(signed) ARNOLD H. KUNERT,
City Clerk

68 (PLAINTIFF'S EXHIBIT FOUR)

Ordinance No. 1945.

An Ordinance Regulating and Routing Certain Vehicles for Hire and Prohibiting Their Use of Certain Streets Within the City of Hammond.

Section 1. Be it Ordained by the Common Council of the City of Hammond, Indiana, that in order to promite public safety and order and to diminish the congestion of vehicular travel within said City, from and after the taking effect of this Ordinance it shall be unawful for any person, firm or corporation owning or operating any motor vehicle engaged in transporting passengers for hire, to move or run such vehicle on, upon or over any of the following parts of streets within said City of Hammond, to-wit:

On Hohman Street from Russell Street to Michigan Avenue;

On State Stret from Morton Court to Calumet Avenue;

On Sibley Street from the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company were the same crosses Sibley Street westerly to Morton Court;

On Fayette Street from Hohman Street to Oakley Avenue.

Section 2. From and after the taking effect of this ordinance it shall be unlawful for any person, firm or corporation owning or operating any motor vehicle carrying passengers for hire, to stop such vehicle for the purpose of

receiving or discharging passengers upon any street,
69 alley or other public place within said City; provided that the Board of Public Works may, for any period not exceeding six (6) months or successions thereof, permit such operation on any or all of the following designated parts of streets; Columbia Avenue between the south city limits and the right of way of the Michigan Central Railroad where the same crosses said Columbia Avenue; Sibley Street from Columbia Avenue to the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company; State Line Street from its southerly terminus to its northerly terminus at or near the right of way of said Michigan Central Railroad aforesaid; Rimbach Avenue from State Line Street to Ann Street; Ann Street from Rimbach Avenue to Russell Street; Russell Street from Ann Street to State Line Street, and for vehicles engaged strictly in interstate commerce, any street or other public place north of 122nd Street and east of Calumet Avenue.

Section 3. Whoever violates any of the provisions of Sections 1 and 2 of this ordinance, shall, upon conviction be fined in any sum not exceeding fifty ($50.00) Dollars for each and every offense, but nothing in this Ordinance shall be construed to impair the obligation of any contract to which the City is a party, under which such motor vehicles are now operated for hire within said City. Nothing herein shall apply to taxicabs.

Section 4. This Ordinance shall supplement such ordinances as are now in force, and repeal only so much of them or any part thereof as may be in direct conflict herewith.

70 (signed) GEORGE J. WOLF,
President

Attest:
(signed) ARNOLD H. KUNERT,
City Clerk

Submitted to the Mayor for his approval this 23rd day of May, 1025.

Approved by me this 23rd day of May, 1925.
(signed) DANIEL BROWN,
Mayor.

Filed in my office after approval by the Mayor this 23rd day of May, 1925.
(signed) ARNOLD H. KUNERT,
City Clerk.

State of Indiana } ss.
County of Lake }

I, Arnold H. Kunert, City Clerk of the City of Hammond said county and state, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 1945 passed by the Common Council on May 22nd, 1925, and as contained in Ordinance No. 6.

(signed) ARNOLD H. KUNERT
Clerk of City of Hammond.
(signed) By HARRIET KLEE
Deputy Clerk

(Seal)

MAPS

TOO

LARGE

FOR

FILMING

102 (PLAINTIFF'S EXHIBIT SIX)

Supplemental Affidavit of Charles W. Gifford.

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*
vs
City of Hammond, a municipal corporation, *Defendant*
No. 26 In Equity

State of Indiana, County of Lake, } ss.

CHARLES W. GIFFORD, being first duly sworn, on oath says he is Superintendent of the plaintiff in the above entitled cause and is acquainted with geographical and traffic conditions in the city of Hammond and adjoining cities and towns. He further says that the City of Hammond extends from Lake Michigan on the north to the Little Calumet River as its southern boundary, a distance of approximately nine miles; the State Line between the states of Indiana and Illinois is its western boundary, and it extends easterly from that line a distance of about five miles to the corporate limits of the city of Gary in that portion of the city of Hammond lying approximately between the Grand Calumet River and the
103 Little Calumet River, and a distance varying from one and one-half to two miles from the State Line easterly to the corporate limits of the cities of Whiting and East Chicago, in that portion of the city lying north of the Grand Calumet River. Said city of Hammond has a population of forty thousand, and much of the territory embraced within its limits in the northerly and southeasterly parts of said city, is open and unoccupied, or sparsely settled; that there are many streets in said city upon which there are no houses or improvements at all, and many other streets in which there are few and scattered houses and improvements; that that portion of said city lying between Gostlin Street on the

north and Standard Avenue on the south, a distance of two and one-half miles, and between the State Line on the west and Calumet Avenue on the east a distance of one mile, is the built-up portion of said city, consisting of business buildings in the downtown district and residence buildings in the outlying portion thereof; that there is no congestion on any of the streets of said built-up portion of said city, due to automobile transportation, except for a block or two in the downtown business district; that none of the streets included in the plaintiff's route into said city to its depot on Sibley Street are or will be congested by the mere stopping of busses therein to take on or discharge passengers.

The City of Gary adjoins the City of Hammond on the east, and the Gary Street Railway Company operates a line of busses from said city to the same terminal used by the plaintiff, just east of Hohman Street on Sibley Street.
104 The plaintiff company is operted in connection with the Gary company, and by means of transfers between the two companies, many through pasesngers are carried from the city of Gary into various towns in Illinois to which the plaintiff's line runs. That this through service extends over the bus lines of both companies, transfers being made at said joint or common station on Sibley Street in Hammond.

Under Ordinance 1045 of the defendant city, neither company can run its busses to said common terminal. The plaintiff is not permitted to come closer to the business district than the intersection of Ann Street and Rimbach Avenue in said city, and the Gary Street Railway Company is required to remain east of the Erie tracks on Sibley Street. The two lines are separated by at least four blocks, and by reason thereof, it is impossible for the plaintiff and said Gary Street Railway Company to continue to operate said through service to and from the city of Gary and said towns in the State of Illinois.

On the 12th day of June, 1925, the plaintiff requested of the Board of Public Works of the defendant city, permission to operate its busses east and west over Russell Street from Ann Street to Oakley Avenue, north on Oakley Avenue to Sibley Street and on said Sibley Street to a common terminal and waiting room with the Gary Street Railway Company at some point east of the tracks of the Chicago and Erie Railroad. Said Board of Public Works declined to grant
105 such permit and offered the plaintiff permission to enter the city and run upon certain streets which were not

useful in conducting its business and which would make impossible the continuance of said through service between said city of Gary and said towns in the State of Illinois. Because of said fact and the impossibility of operating over the routes offered by said Board, without great damage to its business, the plaintiff declined to accept the proffered permits.

Affiant further says that since the filing of the complaint in this cause the Public Service Commission of the State of Indiana has issued to the plaintiff a certificate of convenience any necessity authorizing the plaintiff to operate its bus lines into said city, over the route now used by it to its depot and waiting room on Sibley Street.

And further affiant sayeth not.

(signed) CHARLES W. GIFFORD

Subscribed and sworn to before me the 10th day of July, A. D. 1925.

(signed) MOLLIE KRIEGER

(Seal) *Notary Public*

My commission expires November 5, 1925.

73 (DEFENDANT'S EXHIBIT "A")

Affidavit of John V. Keeler and Fred Deitrich

United States of America } ss.
District of Indiana }

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

(Hammond Division)

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*
vs
City of Hammond, Lake County, Indiana, a municipal corporation, *Defendant*
} No. 26 In Equity

JOHN V. KEELER and FRED DIETRICH, each being duly sworn upon his oath, deposes and says: That they are each members of the Board of Public Works of the City of Hammond, Lake County Indiana, and that the affiant John V. Keeler has been a member of said Board of Public Works for the last two years, and was for seven years previous thereto, a member of the Common Council of the City of Hammond, Indiana, and was Chairman of the Transportation Committee of said Council; that affiant, Deitrich, has been a member of the Board of Public Works for aboue five (5) years; that A. J. Swanson is the third and only other
74 member of said Board, and that he is now on and extended trip to California and absent from the City.

Each affiant says that he is familiar with the various and several streets of said City, and particular in the business district thereof, and is also familiar with the traffic conditions therein.

Affiants further say that the business district of said City consists chiefly of Hohman Street from Michigan Avenue south to Condit Street, the principal business buildings of which are between Plummer Avenue and Clinton Street; that

it consists also of State Street from State Line Street to and slightly beyond Calumet Avenue to the east, the principal business buildings of which are between Morton Court and Sohl Street; further, of Sibley Street from Oakley Avenue to Morton Court, and of a portion of Fayette Street, of Rimbach Avenue and other streets intersecting Hohman Street and within a short distance thereof, and also of Calumet Avenue from Eaton Street north to the Grand Calumet River; that there are other business districts and centers in said city of less importance and extent; that each and all of said streets are sixty (60) feet in width, except Calumet Avenue, which is about eighty-four (84) feet in width; that there is a single track street car line in the center of Hohman Street from Muenich Court north to a distance of about six (6) blocks; a double track line thereon north of the Michigan Central Railroad to and beyond Michigan Avenue, and a passing switch the full length of the block between Muen-
75 ich Court and Russell Street, which is one block south thereof; that State Street has a double track street car line thereon from Calumet Avenue west to Hohman Street, and a single track street car line from Hohman Street west to Morton Court; that Sibley Street has a single track street car line thereon east of Oakley Avenue, and a double track street car line from Oakley Avenue to Hohman Street, and a single track street car line from Hohman Street to Morton Court; that Hohman Street, State Street, Sibley Street and Fayette Street are intersected and crossed by the double track railroad line of the New York, Chicago & St. Louis Railroad, the double track of the Erie Railroad, and the single track of the Chicago, Indianapolis & Louisville Railway, all having contiguous right of way; that many hundreds of cars are moving each day across said streets, and freight trains of more than one-half mile in length are slowly hauled across the same at grade; that Hohman Street is crossed at right angles by the Michigan Central Railroad, consisting of four main tracks, located slightly more than one block north of the corner of State and Hohman Streets, the principal business corner of said City; that many trains cross said street on said tracks, and many long freight trains are slowly drawn across said street at grade; that said railroad intersects the first three named railroads in or adjacent to its crossing on said Hohman Street; that the corner of State and Hohman Street has been generally referred to as the principal business corner of the City; that the business is gradually work-

ing in all directions from said corner, and perhaps
76 chiefly to the south; that at the corner of Fayette Street and Hohman Street, is a five-story office and bank building; that at the southeast corner of Fayette Street and Hohman Street a nine-story office and bank building is now being constructed; that at the southeast corner of Russell Street and Hohman Street, an eight story office building is now being constructed, and that these buildings are and will be the principal office buildings of said City.

Affiants further say that on the accompanying map, which is made a part hereof, and marked "Exhibit A", the parts of streets upon which the plaintiff is forbidden to move its motor busses are indicated in blue; that other streets in the business district of the City are indicated thereon in red; that the streets or parts of streets upon which plaintiff has been tendered the privilege of operating its motor business, that is to stop to receive and discharge passengers in said City, are marked on said map in green.

Affiant further says that the traffic congestion problem in the City of Hammond has become a serious one and difficult to handle and control; that the vehicular traffic on the streets in and adjacent to said business district is very heavy; that for several years jitneys were operating thereon, consisting chiefly of small touring cars, several hundred in number, which badly congested the streets, and particularly because of their stopping to load and unload passengers, they caused delay to other traffic, and by ordinance of the City, said
77 jitney business was finally eliminated, and thereby the congestion somewhat reduced; that about said time a franchise contract was entered into between the City and Calumet Motor Coach Company for the operation of motor busses on the streets of Hammond, and said motor coaches supplanted and took the place of said jitneys, very much to the relief of congestion and the general satisfaction and convenience of the public; that within the past six or eight months, a large number of other motor busses have been introduced into the City and its environs; that none of said motor busses, and this includes those operated by the plaintiff, have any franchise or contract of any kind with the City; that they run to and fro, and particularly through the congested business district, at times that suit their pleasure and convenience, and have added greatly to the congestion and confusion; that it is nothing uncommon for vehicular

traffic to be held up with a solid line of cars extending as much as three blocks, in the heart of the business district; that such delay is caused in part by the motor busses operated by the plaintiff herein, and to a large extent by the movement of railroad trains across said streets, as hereinbefore mentioned, and in part by the narrowness and congestion of the streets generally; that immediately to the west of said City of Hammond is a city known as Calumet City in the State of Illinois; that one street, to-wit: State Line Street is a dividing street between said states and cities, the state line being approximately in the middle thereof.

78 Affiant further says that the plaintiff, and other operators of motor busses having no franchise or contract with the City, run many motor busses from said Calumet City into and through the business district of the City of Hammond to and from points in Indiana and Illinois; that some of said busses are engaged in interstate commerce, and others wholly in intrastate commerce; that the said City Council of said City did, on May 22nd, 1925, pass Ordinance No. 1945 designed to control and regulate vehicular traffic conducted for hire in said City; that said Ordinance became effective on the 9th day of June, 1925, and is now in full force and effect.

Affiants expressly deny the allegation in said sworn Bill of Complaint to the effect that the highways over which it operates its motor busses are not unduly congested, and expressly affirm that they are greatly congested; that such congestion has reached the point where agitation is going on, and in some cases has been crystallized into action for the widening of certain streets; that State Street west of Hohman Street is in process of widening, insofar as local proceedings are concerned, for a space of twenty-eight (28) feet; that said street east of Oakley Avenue is in process of widening for a space of twenty feet; that Hohman Street south of Russell Street is in process of widening, in a physical sense, for a space of twenty feet; that tentative plans are under way for the widening of Hohman Street from State Street to Russell Street for a space of twenty feet; that

79 all of said enterprises entail great expense and cost to the City and the property owners; that plaintiff insists upon operating its motor busses on Sibley Street east and west of Hohman Street, and on all other streets that are greatly congested, as aforesaid; that the streets named in

Section 1 of said Ordinance are improved and paved by special assessment and not in whole or in part by federal act.

Affiants further say that on Monday, June 8th, 1925, the President of the plaintiff company appeared before the Board of Public Works of the City of Hammond, and asked for a permit to operate motor busses under the provisions of Section 2 of said Ordinance No. 1945, and expressly requested that it be permitted to operate its said busses on Sibley Street west of the tracks of the Chicago, Indianapolis & Louisville Railway, which is entirely forbidden by said Ordinance; that said matter was postponed until Friday, June 12th, 1925, at the request of the said plaintiff, on account of the inability of its attorney to be present on Monday, June 8th, and affiants did, as the Board of Public Works of said City, postpone said matter, at the request of said plaintiff, and not otherwise; that on Friday, June 12th, the President of said Company, and other representatives thereof, appeared before the Board of Public Works, of which affiants are members, as aforesaid, and again renewed their request made on June 8th; that on said June 12th, 1925, affiants offered to pass
80 a resolution and tender to the plaintiff and also the Red Line Company, the privilege of bringing its motor busses from Chicago Heights, Lansing, Illinois, and Munster, Indiana, referred to in plaintiff's complaint, into said City, on Hohman Street north to Standard Avenue; thence west to State Line Street, a distance of two blocks; thence north on State Line Street for a distance of about a mile and a half, to Rimbach Avenue; thence east on Rimbach Avenue to Ann Street; thence south on Ann Street to Russell Street; thence west on Russell Street to State Line Street, and thence south by a reverse route, and to receive and discharge passengers throughout the route and return on State Line Street, and to stop and receive passengers throughout said route, all of which is indicated in green on the accompanying map aforesaid; that affiants' offered said permit for the period of one month, and offered to renew the same for longer periods if the operation proved to be satisfactory to all concerned, at which affiants stated to the representatives of the plaintiff company that affiants thought that one month was sufficient to test out the matter, and see whether such operation was feasible, all of which was unconditionally refused by the plaintiff.

Affiants further say that said route so tendered the plaintiff

would be able to receive and discharge passengers within a short block of the Courthouse, and in site thereof, within
81 one short block, and in sight of the Mee Hotel, one of the principal hotels in the City, and also within a like distance of the corner of Fayette Street and Hohman Street, hereinabove referred to, upon which two of the largest office buildings are located, and within one short block of the largest department stores of the City, and immediately in front of one of the largest and most popular theatres of the City, and within three blocks of the corner of State and Hohman Streets, hereinabove mentioned, and in close and convenient proximity to practically all of the business part of the City, located west of the tracks of the three railroads hereinbefore mentioned that intersect the business district on contiguous rights of way; that said route and any part thereof is open to the plaintiff to use and operate its motor busses, under the proposed permit at any time that it seems fit to accept the same; that by diverting said busses to Standard Avenue and State Line Street at the point which affiants propose and offer to divert the same, said cars are kept off the congested part of Hohman Street, upon which a street car line and many motor coaches operate under a franchise with the City of Hammond; that State Line Street is a wide, well-paved street, and ample for the purpose of operating all the service of the plaintiff herein, without undue congestion and without interference or competition of any other bus or transportation line.

Affiants deny that the plaintiff herein has a terminal in any sense on private property on Sibley Street between
82 Hohman Street and the tracks of the Chicago, Indianapolis & Louisville Railway; that heretofore, it is true, that the plaintiff has been stopping its busses in the street in front of a candy store, marked about six rods from Hohman Street east on Sibley Street, and that said candy store has been used as a waiting room for plaintiff's passengers, but that the passengers baggage and merchandise have been loaded on the busses always on the street; that plaintiff has had no contract with the City so to do; that said part of Sibley Street between Hohman Street and the tracks of the Chicago, Indianapolis & Louisville Railway, where said so-called private terminal has been located, is perhaps the worst congested street in the City of Hammond; that a double track street car line is located thereon, and that many taxi-

cabs and other carriers use the same in the vicinity of the depot of said railroad company, and many other persons in private conveyances use said street when waiting for trains at said station, and the congestion, confusion and delay in said particular blocks is one of the worst, if not the worst, in the City; that said delay is caused largely by the fact that when street cars are parked in said street, waiting for their time for departure, plaintiff's busses and other affiliated companies have been stopped in said street parallel to and near to said street cars, in such a way as to prevent any vehicle from moving in said street in an easterly direction; that plaintiff's busses are usually parked at angles and not parallel to the curb, and in such a way as to
83 make unnecessary and undue intrusion on the traveled way in said street; that said busses are large and cumbersome, and occupy more than the room used by ordinary traffic, or other vehicles passing to and fro on said street through said point; that plaintiff has no private terminal in the sense that it receives and discharges passengers on private ground.

Affiants deny that said Ordinance aims to destroy the business of the plaintiff, to render its investment worthless, and to destroy competition, and affiants say that the interested business of the plaintiff herein is in no sense competitive with that of any company or concern to affiants' knowledge.

Affiants deny that the plaintiff will be forced to discontinue its service into the City of Hammond if said ordinance is enforced and said permit is accepted, and on the contrary, if plaintiff is given the freedom of certain streets, which are in close proximity with the heart of the city, while, at the same time, they are kept out of the worst congested portion.

Affiants attach hereto, make a part hereof, and mark "Exhibit B" a copy of the proposed permit which they tendered to the plaintiff on June 12th, 1925.

Affiants further say that, as they are informed and believe, one Charles W. Chase, who, as they are informed, is the President of the plaintiff company; that he is also President of the Gary Street Railway Company, and other corporations engaged in certain forms of transportation
84 service outside of the City of Hammond; that they are informed and believe that said Charles W. Chase owns the controlling interest, if not all the stock, in the plaintiff company, and that he purchased the same long after said

Ordinance No. 1945 was adopted, and with full knowledge of its existence; that in fact, he purchased said stock and the controlling interest of said corporation very shortly before he appeared before the Board of Public Works of the City of Hammond, on June 8th, 1925.

J. V. KEELER (signed)
F. C. DIETRICH (signed)

Subscribed and sworn to before me this 15th day of June, 1925.

DELLA MILLER (signed)
Notary Public

(Notary Seal)

My commission expires June 8, 1926.

MAPS

TOO

LARGE

FOR

FILMING

The Foregoing Statement of the Evidence was Lodged in the Clerk's Office for Filing This 16th day of July, 1925.

MAUDE B. SWANK
Deputy Clerk

The foregoing statement of the evidence is approved and ordered filed, to be embodied as part of the record for the purposes of appeal.

THOS. W. SLICK
Judge of the United States District Court.

Dated: July 17th, 1925.

106 IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

Farina Bus Line and Transportation Company, a corporation, *Plaintiff*, *vs.* City of Hammond, a municipal corporation.	No. 26 In Equity

The plaintiff in the above entitled cause having filed in the office of the Clerk of the District Court, a statement and transcript of the evidence, and the defendant through its solicitors having examined the same, hereby waives that provision in Rule 75 of the Equity Rules that such statement shall be lodged in the office of the Clerk for a period of ten (10) days, and consent to the approval of such statement of the evidence by the Judge of the District Court and the filing thereof in the Clerk's office, to be embodied as a part of the record for the purposes of appeal.

BOMBERGER, PETERS & MORTHLAND,
Attorneys for Defendant

Dated July 16th, A. D. 1925.

(Endorsed) Filed Jul 17 1925 William P. Kappes, Clerk.

107 Be It Further Remembered that afterwards, to-wit: At the said July Term of said Court, on the 17th day of July, A. D. 1925, before the Honorable Thomas W. Slick, Judge of the United States District Court for the District of Indiana, the following proceedings were had, to-wit:

ed July 1925.

Farina Bus Line and Transportation Company
vs.
City of Hammond
} No. 26 In Equity

Comes now the plaintiff by Crumpacker and Friedrich of counsel, and submits to the Court its statement of the evidence herein, which statement is now approved and ordered filed, to be embodied as part of the record for the purposes of appeal.

19 Thereupon the cause is submitted upon the issues so joined; and by agreement of the parties, the evidence taken at the hearing upon the application for a temporary injunction in this cause, is now considered as evidence taken upon the final hearing of this cause; and the court having considered said evidence and other additional evidence offered at this time, and being duly advised in the premises now finds against the plaintiff and for the defendant, that the temporary restraining order issued in this cause on the twelfth day of June, 1925, should be dissolved, and that the plaintiff take nothing by its bill of complaint, to which findings of the court the plaintiff at the time duly excepted.

It Is Accordingly Ordered, Adjudged and Decreed that the said temporary restraining order so issued on the twelfth day of June, 1925 be, and the same is hereby dissolved; that the plaintiff take nothing by its complaint; that no injunction shall issue enjoining the defendant from enforcing Ordinance No. 1945 passed by the defendant City, as described in the complaint and as prayed for therein, and that the defendant have and recover its costs herein laid out and expended.

Thereupon the plaintiff in open court gives notice of an appeal from said judgment and decree of this court, to the United States Circuit Court of Appeals, and at the same time, in open court files its assignment of errors, which assignment omitting formal parts is in the following words and figures, to-wit:

20 Now comes the plaintiff in the above entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause, from the decree made by this honorable court on the 10th day of July, 1925.

1.

Filed Ju
1925.

That the United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the city ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding said ordinance is invalid as an unlawful delegation of legislative powers to the board of public works of the defendant city, in this,—that under section two of said ordinance the board of public works is given the power to grant permits for the operation of motor vehicles carrying passengers for hire upon certain streets of the defendant city, therein named.

The ordinance as an unlawful delegation of legislative power, is in contravention of Article IV Section 1 of the Constitution of the State of Indiana.

As such unlawful delegation of legislative powers, it gives the board of public works the uncontrolled discretion to deny the plaintiff as an interstate carrier of passengers for hire, permission to operate its bus lines on the streets of the defendant city, and thereby imposes an undue burden upon interstate commerce, in contravention ogf Article I, Section 8 of the Constitution of the United States.

21 As an unlawful delegation of legislative authority, it gives the board of public works the uncontrolled discretion to deny the plaintiff the right to operate its bus lines upon the streets of the defendant city and thereby deprives the plaintiff of its property without due process of law, in contravention of Section 1, Article XIV of the Amendments to the Constitution of the United States.

2.

The United States District Court for the District of Indiana erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding said ordinance is unconstitutional and void, for indefiniteness and uncertainty, and notwithstanding it does not declare or set up the standard or conditions which shall govern the board of public works in exercising the power delegated to such board, and because it permits the board to exercise an arbitrary and uncontrolled discretion in the grant-

ing of permits. It contravenes Article IV Section 1 of the Constitution of the State of Indiana. It permits of the imposition of an undue burden on interstate commerce, in contravention of Article I Section 8 of the United States Constitution. It permits the board of works to arbitrarily deny the plaintiff permission to operate its bus lines upon the streets of the defendant city and thereby deprives it of its property without due process of law, in contravention of Article XIV Section 1 of the Amendments to the Constitution of the United States.

22 The other portions of the ordinance are so mutually connected with and dependent upon the invalid portion in section two thereof, that the entire ordinance is invalid.

3.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding said ordinance is void because in excess of the powers of the defendant city, in the following respect:

The control of the operation of motor vehicles transporting passengers for hire upon highways, including streets within the limits of municipal corporations in the State of Indiana, is exclusively in the Public Service Commission of the state, by virtue of the Act of the General Assembly of said state, approved March 4th, 1925, and acts to which said act is supplemental. Section five of said Act of March 4th, 1925, provides that in any city or town of the state where motor transportation is furnished under or by color of a contract, and in cities or towns contiguous thereto, the board of public works, common council or board of trustees, as the case may be, shall continue to supervise, control and regulate such service and to determine when if at all, for public convenience and necessity, competing service shall be established. The proviso exempting such cities from control by the Public Service Commission is invalid, because it creates an arbi-

23 trary classification of cities and towns not bearing any reasonable or just relation to the act in respect to which the classification is proposed.

The proviso makes the cities and towns affected thereby the subjects of local and special legislation, in contravention

of sections 22 and 23, Article IV of the Constitution of the State of Indiana.

It is discriminatory and does not apply equally to all cities and towns naturally falling within the same class, in contravention of Article XIV Section 1 of the Constitution of the United States.

The proviso is divisible from the remaining sections of the Act and, being illegal and void, the Public Service Commission has exclusive control of motor transportation in the city of Hammond, and Ordinance No. 1945 passed by the defendant city is in excess of its powers.

4.

The United States District Court for the District of Indiana erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the ordinances of the defendant city, notwithstanding its enforcement against the plaintiff and not against the Calumet Motor Coach Company, is discriminatory and grants to the Calumet Motor Coach Company privileges and immunities which, upon the same terms, are not granted to the plaintiff, in contravention of Section 23, Article I
24 of the Constitution of the State of Indiana. Its enforcement against the plaintiff and not against the Calumet Motor Coach Company, a company engaged in like business with the plaintiff upon the streets of said city, denies to plaintiff equal protection of the laws, and deprives it of property without due process of law, in contravention of Section 1, Article XIV of the United States Constitution.

The ordinance excludes motor vehicles transporting passengers for hire, entirely from the streets of the city named in section one. It deprives such carriers of the right to stop to receive or discharge passengers on any streets of the city, except under permits granted by the board of works on certain streets named in section two. The third section provides that the ordinance shall not be construed to impair the obligation of any contract to which the city is a party. The city is a party to an alleged franchise contract with the Calumet Motor Coach Company. Notwithstanding this company is transporting passengers for hire upon the streets of the city, engaged in like business with the plaintiff and operating similar vehicles under similar conditions, the city attempts to enforce the ordinance against the plaintiff and not against

the Calumet Motor Coach Company. This is an unlawful discrimination against the plaintiff and renders the ordinance invalid and unconstitutional, and in particular in contravention of the sections of the state and federal constitutions above referred to.

25 5.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being Ordinance No. 1945 of the defendant city, notwithstanding said ordinance is unconstitutional in that it prohibits the operation of the plaintiff's motor bus lines from cities and towns in the state of Illinois into the defendant city in the state of Indiana. The business in which the plaintiff is engaged is interstate commerce, and the ordinance prohibits such business within the defendant city, in contravention of Section 8, Article I of the Constitution of the United States.

6.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action being ordinance No. 1945 of the defendant city, notwithstanding said ordinance imposes and unreasonable and an undue burden upon interstate commerce, in this,—that the plaintiff is engaged in carrying passengers for hire by motor bus, from cities and towns in the State of Illinois, into the defendant city in the state of Indiana. It is not engaged in local hauls within the limits of the defendant city. Section One of the ordinance excludes the plaintiff's busses entirely from certain streets named therein. Section two of the ordinance
26 prevents the plaintiff from stopping to receive or discharge passengers on any street, alley or public place in the defendant city. From the nature of the plaintiff's business, it must stop to receive or discharge passengers, and the restrictions and conditions of the ordinance make it an unwarranted interference with interstate commerce, in contravention of the interstate commerce clause of the United States Constitution.

7.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the defendant city, notwithstanding said ordinance is invalid as in excess of the powers of the defendant city, in this,—that under the laws of the State of Indiana, the extent of the city's power is to adopt reasonable regulations governing motor bus transportation within its limits, and the ordinance in question is an unreasonable regulation of such transportation. It prevents the plaintiff and other transportation companies from stopping to receive or discharge passengers on any of the streets of the city, notwithstanding there are many streets in the city upon which there is no congestion and no reasonable necessity for excluding motor transportation to provide for the public safety or welfare. The ordinance is not therefore, a proper exercise of the police powers of the defendant city.

27

8.

The United States District Court for the District of Indiana, erred in refusing to enjoin the enforcement of the city ordinance set out at length in the complaint in this action, being ordinance No. 1945 of the defendant city, notwithstanding the ordinance is discriminatory in this respect,—The defendant enforces the ordinance against the plaintiff, but not against the Calumet Motor Coach Company. It takes the position that the latter company is operating under a franchise contract with the defendant city, which would be impaired if the ordinance were enforced against that company. The defendant city did not and does not have the power under the laws of the State of Indiana, to grant franchises for the operation of motor vehicles for hire upon its streets. Notwithstanding the city has no such power, it assumed to exercise the same and grant a franchise contract to said Calumet Motor Coach Company, and declines to enforce said ordinance No. 1945 against said company. The ordinance is thereby discriminatory, in contravention of Section 23, Article of the Constitution of the State of Indiana. It denies to the plaintiff equal protection of the laws, and deprives it of its property without due process of law, in contravention of Section 1 Article XIV of the Constitution of the United States.

9.

The United States District Court for the District of Indiana, erred in entering its findings and judgment in favor of the defendant and against the plaintiff in this
28 cause, thereby declining to enjoin the enforcement of ordinance No. 1945 of the city, set out at length in the complaint in this action, notwithstanding said ordinance is unconstitutional and void,

(1) as an unlawful delegation of legislative powers to an administrative board;

(2) as an unlawful delegation of legislative powers to the arbitrary and uncontrolled discretion of an administrative board without declaring or setting up the standards or conditions to govern that board in the exercise of such powers;

(3) as in excess of the powers of the defendant city;

(4) as imposing undue burdens on interstate commerce;

(5) as an arbitrary, unreasonable and improper exercise of the police powers of the defendant city;

(6) as discriminatory against the plaintiff, thereby denying to it equal protection of the laws and depriving it of its property without due process of law;

all in contravention of the Constitution of the State of Indiana and the Constitution of the United States and the amendments thereto.

Wherefore, the appellant prays that said judgment and decree be reversed and that said District Court for the District of Indiana, be ordered to enter a decree in favor of the plaintiff in the above entitled cause.

(signed) CRUMPACKER & FRIEDRICH
Attorneys for Appellant

29 And the plaintiff prays the court to allow said appeal, and the court grants said prayer and allows said appeal upon the filing within the term, of an appeal bond in the sum of Five Hundred ($500.00) Dollars with the United States Fidelity and Guaranty Company as surety thereon. And the plaintiff now tenders its appeal bond in the penal sum, and with the surety, duly executed in accordance with the court's order and decree, which bond is now accepted by the court and placed on file.

(signed) THOMAS W. SLICK,
Judge.

Hammond, Indiana, July 10th, 1925.

Said Appeal Bond, omitting formal parts, is in the following words and figures, to-wit:

APPEAL BOND

Know All Men by These Presents, that we, Farina Bus Line and Transportation Company, a corporation, as principal, and United States Fidelity and Guaranty Company, a corporation, as surety, are held and firmly bound unto the City of Hammond, Lake County, Indiana, a municipal corporation, in the penal sum of Five Hundred ($500.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, firmly by these presents.

The Condition of the above obligation, is such that, Whereas, on the 10th day of July, 1925, in a suit pending in the District Court of the United States for the District of Indiana, entitled *Farina Bus Line and Transportation Company* v. *City of Hammond,* No. 26 in equity, judgment was rendered against said Farina Bus Line and Transportation Company, the principal in this bond, and from which said judgment said principal has appealed to the United States Circuit Court of Appeals for the Seventh Circuit;

Now if the Said Farina Bus Line and Transportation Company shall prosecute said appeal to effect, and answer all costs if it fail to make good its plea, then this obligation shall be void; otherwise to be and remain in full force and effect.

Sealed with our seals and dated the 10th day of July, 1925.

FARINA BUS LINE AND TRANSPORTATION COMPANY,
(signed) By FRED C. CRUMPACKER,
its Attorney and Agent

UNITED STATES FIDELITY AND GUARANTY COMPANY,
(signed) By H. J. GESCHEIDLER,
Resident Agent.

State of Indiana }
County of Lake } ss:

Personally appeared before me, a Notary Public in and for Lake County, Indiana, Fred C. Crumpacker, attorney for Farina Bus Line and Transportation Company, principal in the above and foregoing Appeal Bond, and acknowledged the execution of said bond for and on behalf of said Company, as his free and voluntary act and the free and voluntary act of said Company, for the uses and purposes therein stated.

Witness my hand and notarial seal the 10th day of
31 July, A. D. 1925.

(signed) MOLLIE KRIEGER
(Seal) *Notary Public*

My commission expires November 5, 1925.

State of Indiana }
County of Lake } ss:

Personally appeared before me, a Notary Public in and for Lake County, Indiana, Howard J. Gescheidler, Resident Agent for United States Fidelity and Guaranty Company, Surety in the above and foregoing Appeal Bond, and acknowledged the execution of said bond for and on behalf of said Company, as his free and voluntary act and the free and voluntary act of said Company, for the uses and purposes therein stated.

Witness my hand and notarial seal the 10th day of July, A. D. 1925.

(signed) MOLLIE KRIEGER
(Seal) *Notary Public*

My commission expires November 5, 1925.

(Attached to the original Appeal Bond is Power of Attorney to Howard J. Gescheidler, Resident Agent of the United States Fidelity & Guaranty Company, authorizing said agent to execute said Appeal Bond for the uses and purposes therein set forth.)

107 Said plaintiff now files also its praecipe for transcript of the proceedings and record in this cause, said praecipe, omitting formal parts, being in the words following, to-wit:

William P. Kappes, Clerk:

You are hereby requested to prepare a transcript of the proceedings in the above entitled cause, and to include therein all papers and pleadings filed and on file, all order book entries and rulings, the statement of the evidence, the final judgment and decree and all other papers, documents and records necessary to make a complete transcript of the
108 proceedings and record in said cause in your office, which papers, pleadings and orders so to be included in said transcript, are as follows, to-wit:

1. The Complaint.
2. The temporary restraining order.
3. Defendant's motion to dismiss.
4. The answer to the complaint.
5. The statement of the evidence, as approved by the Judge, and filed.
6. The final order and judgment in its entirety, including notice of appeal.
7. The assignment of errors.
8. The appeal bond.
9. Notice by plaintiff to defendant of lodgment of statement of evidence in the Clerk's office and of plaintiff's request to the court to approve the same, with defendant's waiver of the provision of Rule 75 of the Equity Rules that such statement shall be lodged ten (10) days in the Clerk's office.
10. Copy of this praecipe.

And you are requested to certify to said transcript to be used as the transcript of the record on appeal from the final judgment and decree in the above entitled cause, to the Circuit Court of Appeals of the United States, Seventh Circuit.

Dated this 16th day of July, A. D. 1925.

(signed) CRUMPACKER & FRIEDRICH,
Attorneys for Plaintiff

109 The undersigned attorneys for the defendant in the above cause, hereby acknowledge service of a copy of the foregoing praecipe this 16th day of July, A. D. 1925.

(signed) BOMBERGER, PETERS AND MORTHLAND
Attorneys for Defendant

110 United States of America } ss:
District of Indiana }

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

Farina Bus Line and Transportation Company
vs.
City of Hammond, a municipal corporation
} No. 26 In Equity

CLERK'S CERTIFICATE

I, William P. Kappes, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record, according to the above and foregoing praecipe, in the above entitled cause, as the same appears of record in my office.

Witness my hand and the Seal of said Court, this 31st day of July, A. D. 1925.

WILLIAM P. KAPPES,
Clerk.

(Seal)

By MAUDE B. SWANK,
Deputy Clerk

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 76, inclusive, contain a true copy of the Printed Record, printed under my supervision and filed September 16, 1925, on which the following entitled cause was heard and determined:

Farina Bus Line and Transportation Company, a corporation,

vs.

City of Hammond, Lake County, Indiana, a Municipal Corporation.

No. 3637, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this First day of April, A. D. 1926.

EDWARD M. HOLLOWAY,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the seventh day of October, 1924 of the October term in the year of our Lord one thousand nine hundred and twenty-four and of our Independence the one hundred and forty-ninth.

And afterwards, to wit: On the eighth day of August, 1925, there was filed in the office of the clerk of this court an appearance of counsel for appellant, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 3637 October Term 1924

Farina Bus Line and Transportation Co.
Appellant

vs.

City of Hammond
Appellee

The Clerk will enter my appearance as Counsel for the Appellant.

F. C. CRUMPACKER
E. H. FRIEDRICH
#200 Hammond Bldg.,
Hammond, Indiana

Endorsed: Filed Aug. 8, 1925. Edward M. Holloway, Clerk.

And afterwards, to wit: On the nineteenth day of September, 1925, there was filed in the office of the clerk of this court an appearance of counsel for appellee, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 3637 October Term 1924

Farine Bus Line & Trans. Company

vs.

City of Hammond

The Clerk will enter my appearance as Counsel for the Appellee.

L. L. BOMBERGER
Ruff Building
Hammond, Ind.

Endorsed: Filed Sept. 19, 1925. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the sixth day of October, 1925, of the October Term in the year of our Lord one thousand nine hundred and twenty-five and of our Independence the one hundred and fiftieth.

And afterwards, to wit: On the twenty-fourth day of December, 1925, the following further proceedings were had and entered of record, to wit:

Thursday, December 24, 1925.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Farina Bus Line & Transportation Company
3637 *vs.*
City of Hammond, etc.

Appeal from the District Court of the United States for the District of Indiana.

It is ordered by the court that the time for filing reply brief for appellant in this cause be, and the same is hereby extended thirty (30) days from December 17, 1925.

It is further odered that this cause be, and the same is hereby set down for hearing on Tuesday, January 26, 1926.

And afterwards, to wit: On the twenty-sixth day of January, 1926, the following further proceedings were had and entered of record to wit:

Tuesday, January 26, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.

Farina Bus Line, etc.
3637 *vs.*
City of Hammond, etc.

} Appeal from the District Court of the United States for the District of Indiana.

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. F. C. Crumpacker, counsel for appellant, and by Mr. L. L. Bomberger, counsel for appellees, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: On the twelfth day of March, 1926, there was filed in the office of the clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 3637. October Term, 1925, January Session, 1926.

Farina Bus Line and Transportation Company, a corporation, *Appellant*,
vs.
City of Hammond, Lake County, a Municipal Corporation, *Appellee.*

Appeal from the District Court of the United States for the District of Indiana.

(March 12, 1926)

Before EVANS, PAGE and ANDERSON, *Circuit Judges.*

By PAGE, *Cir. J.*

In so far as here material, the facts in this case are the same as in No. 3668, *Schappi Bus Line* v. *City of Hammond*, decided this date, and the discussion there applies equally to this case.

The decree is reversed, with directions to the District Court to enter a decree granting the injunction.

And on the same day, to wit: On the twelfth day of March, 1926, the following further proceedings were had and entered of record, to wit:

Friday, March 12, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.

Farina Bus Line and Transportation Company, a corporation,
3637 *vs.*
City of Hammond, Lake County, Indiana, a Municipal Corporation

Appeal from the District Court of the United States for the District of Indiana.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Indiana and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with directions to enter a decree granting the injunction.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 79 to 84, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and petitions and orders extending time to file briefs) in the case of

Farina Bus Line and Transportation Company, a Corporation

vs.

City of Hammond, Lake County, Indiana, a Municipal Corporation

No. 3637, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this First day of April A. D. 1926.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4177)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. [redacted] 68

CITY OF HAMMOND, A MUNICIPAL CORPORATION,
Petitioner,

vs.

PANAMA EAST LINES AND TRANSPORTATION COMPANY, A CORPORATION, *Respondent.*

PETITION OF CITY OF HAMMOND, INDIANA FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

LOUIS T. MICHAELS,
LOUDEN L. BOMBERGER,
GLENN D. PETERS,
JOHN A. GAVIT,
OLIVER CLEVELAND,
Attorneys for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. —.

CITY OF HAMMOND, A MUNICIPAL CORPORATION,
Petitioner,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY, A CORPORATION, *Respondent.*

PETITION OF CITY OF HAMMOND, INDIANA, FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To The Honorable The Supreme Court of The United States:

The petitioner, the City of Hammond, Indiana, respectfully prays that a writ of certiorari may issue directed to the United States Circuit Court of Appeals for the Seventh Circuit, to review the judgment and

decree of that Court entered on the 12th day of March, 1926, reversing a decree of the District Court of the United States for the District of Indiana, with directions to said District Court to enter a decree granting an injunction as prayed for by respondent.

STATEMENT OF THE CASE.

Petitioner is a municipal corporation organized under the general laws of the State of Indiana. Respondent is a corporation organized under the laws of the State of Illinois, and engaged in operating a line of motor vehicles as a common carrier of passengers for hire between the City of Hammond, Indiana, and points in the State of Illinois, loading and unloading passengers in the streets of Hammond without a grant from the City. While respondent was so operating, without right and without hindrance, the General Assembly of Indiana placed motor transportation under the Public Utility Law (Ind. Laws 1925, chap. 46, p. 138) leaving certain cities including Hammond, in local control (sec. 5, p. 140, Appendix "A," p. 21).

On May 23rd, 1925, the City of Hammond enacted Ordinance No. 1945 (Appendix "D" p. 23) by section 1 of which it was made unlawful to move or run a motor vehicle engaged in transporting passengers for hire upon certain named streets of the city; by section 2 of which it was made unlawful for the operator of any such vehicle to stop the same to receive or discharge passengers upon any street or other public place within the city. This section contained a proviso that the Board of Public Works might grant permits for such purpose on certain named streets and parts of streets. Section 3 provided that the ordinance should not be so construed as to impair the ob-

ligation of any contract to which the city is a party, under which such vehicles "are now operated for hire within said city."

Respondent instituted suit for temporary and permanent injunction in the District Court for the District of Indiana, seeking to enjoin petitioner from enforcing any part of said ordinance, alleging therein that it is a corporation and citizen and resident of the State of Illinois, and its right to maintain suit on the ground of diversity of citizenship, and on the further ground that the ordinance was violative of the commerce clause and the Fourteenth Amendment (Rec. 1-6).

Respondent also claimed the protection of a certificate of convenience and necessity issued to it by the Public Service Commission of Indiana, after the commencement of the suit.

Issues were joined, and by agreement, the evidence introduced on the motion for temporary injunction was considered as evidence upon the final hearing. The motion for temporary and permanent injunction was denied, and judgment rendered for the defendant (Rec. 66).

Respondent then appealed to the Circuit Court of Appeals for the Seventh Circuit, which entered a decree holding the ordinance void, reversing the order of the District Court, and directing that the injunction be granted (Rec. 83-84). The case was decided on the same day as *Schappi Bus Line vs. City of Hammond*, and the discussion of that case permitted to stand as the opinion of the Court in this case (Rec. 83).

Petitioner files herewith, and as a part hereof, a certified transcript of the record in the Circuit Court of Appeals for the Seventh Circuit.

REASONS FOR THE ISSUANCE OF THE WRIT.

Petitioner avers that the decree of the Circuit Court of Appeals for the Seventh Circuit is erroneous in the following particulars:

1. By its finding that respondent is a corporation of the State of Indiana, whereas the pleadings aver, and the uncontradicted evidence is, is that it is organized only in the State of Illinois, is "a resident and citizen" of that State, and therefore is not within the privileges and immunities clause of the Fourteenth Amendment of the Constitution.

2. By its confusion of police regulations with the general police power, and holding that the ordinance was a mere traffic regulation, whereas it was an exercise of the general police power to prevent the use of streets for the conduct of the private business of a common carrier without an express grant or franchise.

3. By its ruling that respondent had rights on the streets of Hammond arising out of a certificate of the Public Service Commission of the state. Such ruling is erroneous, because

(a) Respondent being a corporation and citizen of the State of Illinois cannot lawfully receive a certificate of convenience and necessity, it being provided by statute in Indiana that

> "No license, permit or franchise to own, operate, manage or control any plant or equipment of any public utility shall be hereafter granted or transferred except to a corporation duly organized under the laws of the State of Indiana or to a citizen of such state."
>
> Sec. 99, Ind. Laws, 1913, chap. 76, p. 201; Burns' R. S. Ind. 1914, sec. 10052v3.

(b) It is uncontradicted in the record that at the time the certificate of convenience and necessity was issued to respondent, and at the time the ordinance in question was adopted, the City of Hammond was receiving motor transportation under a franchise contract theretofore granted by said city to Calumet Motor Coach Company, and petitioner avers that it has sole jurisdiction of the establishment and regulation of such service within its limits, by reason of the exception appearing by proviso in section 5 of the Act under which the Public Service Commission granted the certificates, such exception and proviso reading as follows:

> "That in any city or town of this state where motor transportation is now furnished under, or by color of a contract, and in cities and towns contiguous thereto, the board of public works, common council or board of trustees, as the case may be, shall continue to supervise, control, permit, contract for and regulate such service and to determine when, if at all, for public convenience and necessity competing service shall be established; but the determination of the question of public convenience and necessity for competing service, shall be subject to appeal to and review by the circuit or superior courts of the county upon complaint of any interested person filed within twenty days after such finding is made, and in the manner now provided by law for procedure in civil cases, including the right of appeal to the Supreme Court."

Chap. 46, Ind. Laws 1925, p. 140, Appendix "A."

4. The petitioner avers that the Circuit Court of Appeals erred in holding the ordinance void, because it found that there was discrimination in its enforcement, petitioner not enforcing it against a corporation having a franchise contract to operate over the

streets mentioned in Section 1, and to receive and discharge passengers in the streets wherever it operates; the effect of the decision of the Circuit Court of Appeals being that the city has no power to grant a franchise to one to transact public business in the streets, and to prohibit non-franchise holders from doing the same thing, contrary to law and the decision of the Supreme Court of Indiana in *Farmers Tel. Co. vs. Boswell*, 187 Ind. 371. The two decisions are in conflict.

5. Petitioner avers that the Circuit Court of Appeals decided the case contrary to law and the decision of the Supreme Court of Indiana in *Frick vs. City of Gary*, 192 Ind. 76, that the transaction of business similar to that of respondent in a public place is not a right, but a mere privilege which may be granted or withheld by the municipality, and in *Denny vs. City of Muncie* (November 24th, 1925), 149 N. E. Rep. 639 (not yet officially reported), that under motor vehicle regulation laws similar to the law now in force, the city possessed power to prevent the use of certain streets by common carriers of passengers by motor vehicle, and that the city has exclusive power to control and care for its streets. The decision of the Court of Appeals is in conflict with the two Indiana decisions cited.

6. The Circuit Court of Appeals traveled on the erroneous theory that respondent is entitled to the protection of the Fourteenth Amendment, whereas, if it has any claim of right to attack the ordinance, it is by reason of the protection of the commerce clause in the Constitution. The decision of the Circuit Court of Appeals is not placed on that theory, and it does not state upon what right it has considered respondent's case, but petitioner avers that the question of the ex-

tent of immunity from local regulations to be enjoyed by an interstate motor carrier was clearly presented to the Circuit Court of Appeals by the record made in the District Court, that it is the only question in the case, and it is of such sufficient general importance that it should be decided by this Court.

7. The record (Rec. 1-6) presented to the Circuit Court of Appeals the question whether an interstate carrier could, as against reasonable local regulations, choose the streets for the route to his terminal, and the question whether using the streets for receiving and discharging passengers was such an incident of interstate commerce as to give immunity from local prohibition by the city having exclusive jurisdiction of its streets under the statutes creating it. These questions petitioner avers to be of sufficient general importance that they should be decided by this Court.

Wherefore petitioner prays that a writ of certiorari issue out of and under the seal of this court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in this cause, and that this court thereupon will proceed to correct the errors complained of, and affirm the judgment and decree of the District Court; and your petitioner will ever pray.

CITY OF HAMMOND,

By LOUIS T. MICHENER,
LOUDEN L. BOMBERGER,
GLENN D. PETERS,
JOHN A. GAVITT,
CLYDE CLEVELAND,
Its Attorneys.

We certify that we are attorneys for the petitioner herein; that the allegations contained in said petition are true, and that said petition is in our opinion well founded in point of law.

LOUIS T. MICHENER,
LOUDEN L. BOMBERGER,
GLENN D. PETERS,
JOHN A. GAVIT,
CLYDE CLEVELAND.

District of Columbia, ss:

LOUIS T. MICHENER, of lawful age, being first duly sworn according to law, deposes and says, that he is one of the attorneys for the petitioner in the above entitled case; that he knows the contents of the foregoing petition, and that the statements of fact therein made are true.

.....

Subscribed and sworn to before me, a Notary Public in and for said District, on this — day of May, 1926.

.....
Notary Public.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. —.

CITY OF HAMMOND, A MUNICIPAL CORPORATION,
Petitioner,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY, A CORPORATION, *Respondent.*

BRIEF ON PETITION FOR CERTIORARI.

REFERENCE TO OFFICIAL REPORT.

The opinion delivered by the Circuit Court of Appeals is not yet reported, but is found on page 83 of the Record. No opinion was written in the District Court. The Circuit Court of Appeals wrote no opinion except to follow its decision in *Schappi Bus Line vs. City of Hammond,* decided on the same day, ordering the District Court to enter a decree granting the injunction (Rec. 83).

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED HERE.

(1) On March 12th, 1926, the opinion of the Court was filed (Rec. 101) and on the same date an order was entered reversing the cause, with a mandate to the District Court to enter a decree granting the injunction (Rec. 84).

(2) The Circuit Court of Appeals erroneously found that respondent is an Indiana corporation and

decided the case on the theory that the petitioner was discriminating between two citizens of that state in the enforcement of a police regulation. (Opinion in *Schappi case*, Rec. 104.) Respondent is not a citizen of Indiana within the privilege and immunity clause of the Fourteenth Amendment.

(3) The Circuit Court of Appeals erroneously applied the principle of uniformity of police or traffic regulations to a case which involved the exercise of the general police power conferred upon petitioner to prevent the use of its streets for the private business of hauling passengers as a common carrier by motor vehicle. (Opinion in *Schappi case*, Rec. 104, 5.)

(4) The respondent being a corporation and citizen of Illinois (Rec. pp. 1-12), could not invoke the protection of the privilege and immunity clause in operating its vehicles in Indiana, and although the opinion of the Circuit Court of Appeals does not indicate upon what basis it entertained respondent's claim of right, it is evident that it must have been upon that ground alone.

(5) Respondent claimed the right to operate on the streets of Hammond under a certificate of convenience and necessity issued by the Public Service Commission of Indiana (Rec. p. 53), which was given weight by the Circuit Court of Appeals (Opinion in *Schappi case*, Rec. 101). Petitioner denies the validity of this certificate for the reasons that:

(a) Respondent being a corporation and citizen of the state of Illinois could not lawfully receive it because of the prohibition of Section 99 Ind. Laws 1913, chap. 76, Burns R. S. 1914, sec. 10052v3, copied on p. 4 of the petition.

(b) That the exception in section 5 of the Moore-

head Law, being chap. 46, p. 138, Ind. Laws 1925 (Opinion in *Schappi case*, p. 103) gave petitioner sole jurisdiction of motor coach traffic within its limits. See Appendix "A," page 18.

(6) The Circuit Court of Appeals has decided a local question, that is, the right of the city of Hammond to grant a franchise to one carrier, and deny to another the privilege of rendering the same service, contrary to the decisions of the Supreme Court of Indiana, as expressed in *Frick vs. City of Gary*, 192 Ind. 76, in which it was held that an individual who engages in the conduct of business in a highway without obtaining a franchise to do so, has no property right to continue it, and that he has no inherent right to select a street or streets for use for the purpose of loading and discharging passengers, and to forbid him to do so does not invade his constitutional rights, and the decision of that Court in *Denny vs. City of Muncie*, 149 N. E. Rep. 639, in which it held that the operation of busses on a public street is a matter of privilege, and not of right, which can be permitted by the city upon such terms as it may prescribe or may be prohibited. There is thus a conflict between the State Courts and the Circuit Court of Appeals.

(7) The decision of the Circuit Court of Appeals practically nullifies the value of a franchise (Opinion in *Schappi case*, Rec. 105) and thus conflicts with the local decisions as evidenced by the decision of the Supreme Court of Indiana in *Farmers Telephone Company vs. Boswell Telephone Company*, 187 Ind. 371, in which it is held that franchises for the use of public highways may be granted or withheld, and in thus exercising its police powers the state may make discriminations and distinctions, and judge of the reasonableness thereof.

(8) The Record presented to the Court of Appeals two questions of respondent's rights as an interstate carrier:

(a) The question whether it could move its vehicles over certain streets forbidden by section 1 of the ordinance.

(b) The question whether it could use the streets of the city to receive and discharge interstate passengers in violation of section 2 of the ordinance.

Neither question is discussed or decided by the Circuit Court of Appeals.

(9) The question of local control of interstate carriers by motor vehicles on highways, and the extent to which such carriers are immune from such control by the commerce clause was presented to the Circuit Court of Appeals (Rec. 1-6, 54-61) was not considered by the Court and is a matter of general public concern which should be decided by this Court.

(10) The Circuit Court of Appeals found that petitioner was discriminating against respondent by permitting a franchised company to do what the ordinance prohibited. Upon this finding the Court erroneously held that the ordinance itself was void, although no defects appeared upon its face (Opinion in *Schappi case*, Rec. 105).

(11) The Circuit Court of Appeals found that the ordinance was not necessary to prevent congestion (Opinion in *Schappi case*, Rec. 104) basing its finding upon the fact that parking was permitted to the extent of one hour on both sides of the streets in question. The Court thus attempted to set up its own judgment against that of the municipal council on a legislative question as to the manner and from what standpoint congestion should be attacked. The record shows without contradiction that the streets are narrow, and

much congested, and large sums are being expended to widen the same (Rec. 54-57).

(12) Section 240 of the Judicial Code as amended by Act of February 13th, 1925, confers upon this Court jurisdiction to require by certiorari, either before or after judgment or decree by a Circuit Court of Appeals, that a case be certified therefrom to this Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought by unrestricted writ of error or appeal. Section 129 of said Code, as amended by said Act, provides that said section 240, as amended, shall apply to the granting or refusal of an injunction. The mandate to the District Court to enter the injunction because the ordinance is void ended the case.

STATEMENT OF THE CASE.

The facts in this case differ from the facts in the *Schappi case* only with reference to the respondent's business and the route which it has used in petitioner city. Respondent had one line entering the city from the south coming on Hohman Street, the principal business street, north to a ticket office on Sibley Street, one-half block east of Hohman Street, where it stopped its coaches in the street to receive and discharge passengers. (See map, Rec. 49, route indicated by red line.) In so doing, it violated Ordinance No. 1945 in two particulars: (1) By running two blocks on Hohman Street and one-half block on Sibley Street, forbidden by the first section of the ordinance, and (2) in stopping to receive and discharge passengers in Sibley Street in violation of the second section. These forbidden parts of streets are marked in blue on the map (Rec. 63). Streets on which permits to receive

and discharge passengers may be granted are indicated in green, and those over which it may move without stopping to transact business are indicated in red on said map.

It appears by the affidavit of respondent's Superintendent (Rec. 53) that since the filing of the complaint, the Public Service Commission of Indiana issued to respondent a certificate of convenience and necessity to operate its line over the route shown on the map (Rec. 49). The part of Sibley Street used by respondent for its depot grounds is probably the most congested part of the city (Rec. 60).

One of the chief grounds of complaint urged by respondent was the fact that it attempted to operate some kind of co-ordinated service with the Gary Street Railway, which is a street car line on Sibley Street (Rec. 52).

Petitioner submits that the bill for injunction presented the identical questions of law that were raised in the *Schappi case*.

ERRORS ASSIGNED.

Petitioner assigns the following errors:

(1) The Circuit Court of Appeals for the Seventh Circuit erroneously found that respondent is a corporation of the State of Indiana, thus giving it a standing to make claims of right which a foreign corporation could not make.

(2) The Circuit Court of Appeals for the Seventh Circuit erroneously held that petitioner's Ordinance No. 1945 was illegal and void, because it permitted franchised carriers to do what respondent was forbidden to do.

(3) The Circuit Court of Appeals for the Seventh Circuit erroneously held that it is unlawful to permit a franchised carrier to do that which is denied one having no franchise.

(4) The Circuit Court of Appeals for the Seventh Circuit erroneously set up its own judgment against that of a municipal legislature on a purely legislative question, that is to say, whether congestion in the streets should be relieved in one manner or another, and held that because one form of congestion was permitted (*i. e.* parking), the municipality was without authority to condemn or prohibit another.

(5) The Circuit Court of Appeals for the Seventh Circuit erroneously confused the duty of the municipality to make and apply police regulations uniformly with its right under the general police power to determine, in the first instance, what, if any, carrier, should be permitted to use the streets.

(6) The Circuit Court of Appeals for the Seventh Circuit erroneously held that the granting of a franchise and consequent exemption of the franchised company from an ordinance forbidding others to do what the franchised company was permitted to do, was an unlawful bartering away of the police power to the franchised company.

(7) The Circuit Court of Appeals for the Seventh Circuit erroneously held that the ordinance was void, although the only fault it claimed to find with it was in the matter of its enforcement.

(8) The Circuit Court of Appeals for the Seventh Circuit erred in reversing the decree of the District Court of the United States for the District of Indiana, and in directing that court to enter a decree granting the injunction.

BRIEF OF ARGUMENT.

Respondent made the same claims as to interstate commerce that were made in the *Schappi case,* but did not attempt to transact local business in Indiana. The question is therefore strictly an interstate one. If petitioner city has the jurisdiction over its streets which it is advised it has under the laws of Indiana, and the Public Service Commission has no jurisdiction therein, and especially none to establish interstate commerce, then the ordinance is valid, unless it is an undue burden upon respondent's interstate business. Respondent, like respondent in the *Schappi case,* is claiming the right to use the streets as a place of transacting private business for profit. If its interstate character confers such right as an incident of the business, then the ordinance cannot prevent it. If, on the other hand, receiving and discharging passengers in a street is more than a mere incident of the right to move under the protection of the commerce clause, the ordinance prevails.

The point is made in the instant case that a great many people in Illinois have no other convenient means of getting to the petitioner city, and the coordinated service between respondent and the Gary Railway Company, which operates a street railway, is made less convenient. These, of course, are considerations of a prudential nature which it may be assumed were duly considered by the City Council of petitioner city, and that in exercising its judgment on the question, it was not moved to act against the paramount public interests.

Erie R. Co. vs. Board of Public Utility Comrs.,
245 U. S. 394.

This Record presents the identical error of fact that appears in the *Schappi case*, namely, a finding by the Circuit Court of Appeals that respondent is a corporation of the State of Indiana. The Record shows quite the contrary, and jurisdiction is invoked in the opening sentences of the Bill of Complaint solely on the ground of diversity of citizenship (R. 1).

The authorities and argument presented in the brief to support the petition for the writ in the *Schappi case* are respectfully referred to and adopted as the brief and argument in this case.

A reversal of the decree of the Circuit Court of Appeals is respectfully prayed.

Louis T. Michener,
Louden L. Bomberger,
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Attorneys for Petitioner.

APPENDIX "A"

Chapter 46

AN ACT entitled "An act to regulate certain carriers of persons and property by motor vehicle for compensation on the public highways of the State of Indiana, and supplemental to an act entitled 'An act concerning public utilities, creating a public service commission, abolishing the railroad commission of Indiana, and conferring the powers of the railroad commission on the public service commission,' approved March 4, 1913, and declaring an emergency."

(S. 16. Approved March 4, 1925.)

MOTOR VEHICLE CARRIERS—DECLARED TO BE PUBLIC UTILITIES.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA, That every corporation, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, that now or hereafter may own, operate, manage or control any motor vehicle, except as hereinafter provided, for the purpose of transporting passengers or property for compensation as a common carrier upon any of the public highways of the State of Indiana is hereby declared to be a public utility within the meaning of the act of the general assembly of the State of Indiana entitled: "An act concerning public utilities, creating a public service commission, abolishing the railroad commission of Indiana, and conferring the powers of the railroad commission on the public service commission," approved March 4, 1913, and, except as herein provided, subject to all the terms and provisions of said act, in so far as the terms and provisions of said act may be reasonably applicable to such carriers.

PUBLIC SERVICE COMMISSION—CERTIFICATE OF CONVENIENCE AND NECESSITY —EXISTING CARRIERS.

SEC. 2. No motor vehicle, except as hereinafter provided, shall be operated upon any public highway of the State of Indiana for the purpose of transporting passengers or property for compensation as a common carrier until after there shall have been obtained from the public service commission of Indiana a certificate declaring that public convenience and necessity require such operation, and no certificate shall be issued except as hereinafter provided until after a public hearing and a consideration of the service, if any, rendered in the territory of the proposed motor vehicle operation by other motor vehicle common carriers. Such commission is empowered to adopt rules and regulations to govern applications for certificates of convenience and necessity and hearing thereon: *Provided, however,* That the owner of any motor vehicle common carrier service which has been lawfully operated over a fixed route with a substantially regular schedule, upon the highways of the state for a period of ninety days immediately prior to the taking effect of this act and is engaged in such operation at the time of filing application therefore, shall receive from the public service commission a certificate of convenience and necessity to continue such operation, upon submitting to the public service commission within thirty days from the taking effect of this act, verified proof in writing of such continued service and complying with the provisions of section 3 of this act, and any certificate owned, held or obtained by any such carrier may be sold, assigned, leased, bequeathed or transferred as other property upon approval by the commission.

DEFINITION OF "MOTOR VEHICLE" AND "PUBLIC HIGHWAY."

SEC. 4. The term "motor vehicle" as used in this act means any automobile or other self-propelled vehicle

not operated or driven upon fixed rails or track, including any trailer thereto attached; and the term "public highway" as used in this act means any public road, street, avenue or alley in the State of Indiana.

VEHICLES TO WHICH ACT IS INAPPLICABLE —LOCAL CONTROL.

Sec. 5. None of the provisions of this act shall apply to the owning, operation, management or control of taxicabs, hotel buses, funeral buses or school buses or to owning, controlling, operating, or managing motor propelled vehicle the major use of which is for private business of the owners and the use of which for hire is only casual or occasional or under special contract or arrangement: and *Provided, further,* That in any city or town of this state where motor transportation is now furnished under, or by color of, a contract, and in cities and towns contiguous thereto, the board of public works, common council or board of trustees, as the case may be, shall continue to supervise, control, permit, contract for and regulate such service and to determine when, if at all, for public convenience and necessity competing service shall be established; but the determination of the question of public convenience and necessity for competing service, shall be subject to appeal to and review by the circuit or superior courts of the county upon complaint of any interested person filed within twenty days after such finding is made, and in the manner now provided by law for procedure in civil cases, including the right of appeal to the supreme court,

HIGHWAY COMMISSION—OTHER AUTHORITIES—JURISDICTION, POWERS.

Sec. 10. This act shall be supplementary to the act entitled "An act concerning public utilities, creating a public service commission, abolishing the railroad commission of Indiana, and conferring the powers of

the railroad commission on the public service commission," approved March 4, 1913: *Provided, however*, That none of the provisions of this act shall operate to deprive the state highway commission of Indiana or any other public authorities of any jurisdiction it or they now has or have or which may hereafter be conferred upon it or them over the public highways of the state, nor prevent said state highway commission of Indiana or other authorities from suspending, at any time, the right of motor buses to operate on any public highway where necessary to preserve said highway.

APPENDIX "B"

Chapter 213

AN ACT providing for the registration and licensing of motor vehicles, motor bicycles, tractors, trailers and semi-trailers, for the regulation of the use and operation thereof on the public highways, defining chauffeurs and providing for the examination and licensing thereof, the suspension and revocation of licenses, and the transfer of ownership, requiring the keeping of certain records of motor vehicles, motor bicycles and motor trucks for which storage, supplies or repairs are furnished, providing that liens may be taken thereon, and prescribing penalties for the violation thereof.

(H. 103. Approved March 14, 1925.)

MUNICIPAL REGULATIONS—CITY AND TOWN LICENSES.

Sec. 45. Except as herein otherwise provided, no city, town or other municipal corporation shall have any power or authority to make any ordinance, by-laws or resolution, limiting or restricting the use or speed of motor vehicles or motor bicycles, and no ordinance, by-laws or resolution heretofore or hereafter

made by any city, town or other municipal corporation within this state, by whatever name known or designated, in respect to or limiting the use of motor vehicles or motor bicycles, shall have any force, effect or validity, and all such ordinances, by-laws and resolutions are hereby declared to be of no validity or effect. Nothing in this act contained shall be construed as affecting the power of cities, towns and other municipal corporations to make and enforce ordinances, rules and regulations affecting motor trucks and motor driven commercial vehicles which are used within the limits of such municipal corporations for public hire, or from making and enforcing reasonable traffic and other regulations, except as to rates of speed, not inconsistent with the provisions of this act. A license issued by any city or town for any motor truck or motor driven commercial vehicle used for hire shall be valid in every city and town of the state for and during the year for which such license is issued, and only one such city or town license shall be required for any such motor vehicle for any one year.

APPENDIX "C."

Chapter 76.

AN ACT concerning public utilities, creating a public service commission, abolishing the railroad commission of Indiana, and conferring the powers of the railroad commission on the public service commission.

(Approved March 4, 1913.)

MUNICIPAL COUNCIL—POWERS.

Sec. 110. Every municipal council shall have power, (a) to determine by contract, ordinance or otherwise the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product of service within said mu-

nicipality and all other terms and conditions not inconsistent with this act upon which such public utility may be permitted to occupy the streets, highways, or other public property within such municipality, and such contract, ordinance or other determination of such municipality shall be in force and *prima facie* reasonable. Upon complaint made by such public utility or by any qualified complainant as provided in section 57 the commission shall set a hearing as provided in sections 57 to 71 and if it shall find such contract, ordinance or other determination to be unreasonable, such contract, ordinance or other determination shall be void. (b) To require of any public utility by ordinance or otherwise such additions and extensions to its physical plant within said municipality as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed and all conditions under which they must be constructed subject to review by the commission as provided in subdivision (a) of this section. (c) To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions hereof. (d) The power and authority granted in this section shall exist and be vested in said municipalities anything in this act to the contrary notwithstanding. (Here follow provisions for an appeal on the question of additions to plant.)

APPENDIX "D."

ORDINANCE NO. 1945.

AN ORDINANCE REGULATING AND ROUTING CERTAIN VEHICLES FOR HIRE AND PROHIBITING THEIR USE OF CERTAIN STREETS WITHIN THE CITY OF HAMMOND.

Section 1. BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF HAMMOND, INDIANA, That in order to promote public safety and order and

to diminish the congestion of vehicular travel within said City, from and after the taking effect of this Ordinance it shall be unlawful for any person, firm or corporation owning or operating any motor vehicle engaged in transporting passengers for hire, to move or run such vehicle on, upon or over any of the following parts of streets within said City of Hammond, to wit:

On Hohman Street from Russell Street to Michigan Avenue;

On State Street from Morton Court to Calumet Avenue;

On Sibley Street from the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company where the same crosses Sibley Street westerly to Morton Court;

On Fayette Street from Hohman Street to Oakley Avenue.

Section 2. From and after the taking effect of this ordinance it shall be unlawful for any person, firm or corporation owning or operating any motor vehicle carrying passengers for hire, to stop such vehicle for the purpose of receiving or discharging passengers upon any street, alley or other public place within said City; provided that the Board of Public Works may, for any period not exceeding six (6) months or successions thereof, permit such operation on any or all of the following designated parts of streets; Columbia Avenue between the south city limits and the right of way of the Michigan Central Railroad where the same crosses said Columbia Avenue; Sibley Street from Columbia Avenue to the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company; State Line Street from its southerly terminus to its northerly terminus at or near the right of way of said Michigan Central Railroad aforesaid; Rimbach Avenue from State Line Street to Ann Street; Ann Street from Rimbach Avenue to Russell Street; Russell Street from Ann Street to State Line Street, and for vehicles engaged strictly in interstate com-

merce, any street or other public place north of 122nd Street and east of Calumet Avenue.

Section 3. Whoever violates any of the provisions of Sections 1 and 2 of this ordinance, shall, upon conviction be fined in any sum not exceeding fifty ($50.00) dollars for each and every offense, but nothing in this Ordinance shall be construed to impair the obligation of any contract to which the City is a party, under which such motor vehicles are now operated for hire within said City. Nothing herein shall apply to taxicabs.

Section 4. This Ordinance shall supplement such ordinances as are now in force, and repeal only so much of them or any part thereof as may be in direct conflict herewith.

OCT 21 1926
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1926.

No. [redacted] 68

CITY OF HAMMOND, LAKE COUNTY, INDIANA, A Municipal Corporation, *Petitioner*,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY, A Corporation, *Respondent*.

REPLY TO THE SUGGESTIONS OF RESPONDENT IN ITS OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

LOUIS T. MICHENER,
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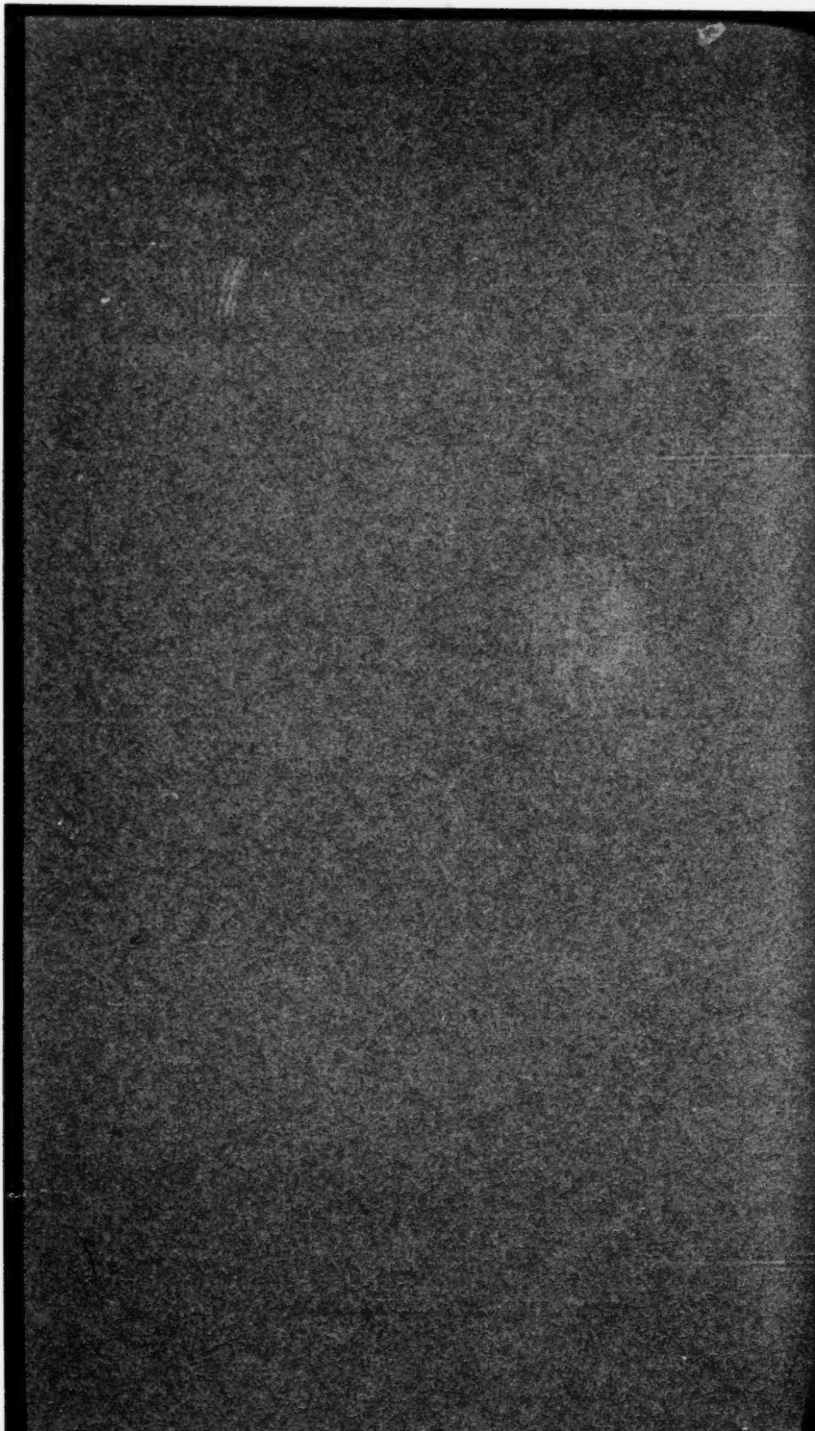

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IN THE

Supreme Court of the United States

October Term 1926.

No. 386.

City of Hammond, Lake County, Indiana, A Municipal Corporation, *Petitioner*,

vs.

Farina Bus Line and Transportation Company, A Corporation, *Respondent*.

REPLY TO THE SUGGESTIONS OF RESPONDENT IN ITS OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

The position of the Respondent is threefold, and in every respect, Petitioner believes, is untenable. The suggestions of Respondent group under three propositions:

1. Reliance upon the facts which it asserts.
2. A claim that it has an inherent right, incident to its right to carry interstate commerce, to load and unload its passengers in the streets.

3. It claims that it may do all within the petitioner city that a franchise carrier may do. From this it argues that inasmuch as the ordinance is not enforced against the franchise carrier, it cannot be enforced against Respondent.

Petitioner asks the consideration of the Court to a very brief discussion of these points.

I.

THE FACTS.

Respondent asserts that this is essentially a fact case. This is not conceded, but on the contrary, the case must be decided on legal principles, and while the statement of facts set up in Respondent's brief is designed to show that the city is in a sense proposing to "kill a goose that lays golden eggs," (*Erie R. Co. vs. Board of Public Utilities,* 254 U. S. 394) still it must be left to municipal discretion to determine whether any more golden eggs are desirable.

The point is made that there is plenty of room on the streets. There is a misleading statement in this respect at page 5 of Respondent's brief, where it is said that Hohman Street is 80 feet in width and well-paved. This is true south of Russell Street, but at Russell Street it narrows to 60 feet, and at this street the real business district begins, so that there is great congestion in this street in the business district. (Rec. pp. 55, 56 and 57). The Respondent is permitted under the ordinance to come in on Hohman Street as far north as Russell Street. On page 6 of Respondent's brief it is said that State Line Street pavement is not suitable for automobile traffic. Reference is made to the testimony of Mr. Gifford, Superinten-

dent of Respondent, who upon being deliberately lead, says that although paved, it is very rough. This assertion is flatly contradicted by the members of the Board of Works of the city, who testify (Rec. p. 59) that "State Line Street is a wide, well-paved street, and ample for the purpose of operating all the service of the plaintiff herein, without undue congestion and without interference or competition of any other bus or transportation line." *It was this evidence that was believed and adopted by the District Court by reason of its finding against the Respondent.* It also appears from the testimony of the members of the Board of Works that the route on State Line Street comes within a block of the courthouse; close to one of the principal hotels, and two of the largest office buildings of the city; immediately in front of one of the largest theaters, and within three blocks of the main business corner of the city (Rec. 59). So it is not conceded, *and was not found by the District Court,* that any undue hardship was imposed upon Respondent or its patrons.

II.

AN INTERSTATE CARRIER HAS NO INHERENT RIGHT TO USE STREETS FOR LOADING AND UNLOADING PASSENGERS.

The authorities appearing at pages 25, *et seq.,* of Petitioner's brief in the *Schappi case,* No. 385, show that there is no inherent right to use the streets as the principal place of conducting one's business. See, particularly, *Hadfield vs. Lundin,* L. R. A. 1918B, 909 (Wash.); *Dickey vs. Davis,* L. R. A. 1915F, 840 (W. Va.). Respondents in both this and the *Schappi case,* rely on *Parker vs. Silverton,* 109 Ore. 298, which

holds that where a carrier obtains a right from the state acting through its agent, the Public Service Commission, such right could not be restricted as to a use of streets to stop for receiving and discharging passengers by the state's other agent, the municipality. Both agencies derive their power from the same source, but, of course, authority granted to one could not be destroyed by the unauthorized act of the other. With an interstate carrier it is different. It has a right to pass over the highways of commerce without undue restriction, but this right is a mere right of passage, and whenever it proposes, within the limits of any state, to use the streets for a purpose which the state may permit or deny to a local carrier, the mere right of passage cannot be relied upon as giving the interstate carrier the privilege of flouting the state authorities and using streets which are dedicated solely to the right of passage for a use which is not common to all.

Authorities like *Callanan vs. Gilman*, 107 N. Y. 360, are not in point, because they involve the right of an adjacent property owner to use the street in a limited way for receiving and discharging his goods. This right is universally recognized.

Both Respondents fall back to the English case of *Rex vs. Cross*, 3 Camp. 224, to support their claim that a stage coach or omnibus may stop in a street long enough to receive and discharge passengers. They mis-apply this case and those that follow it, for they ignore the point of decision which was that Cross could not use the street for a stable yard. No question of right to stop to load or unload was involved, and, of course, no question of interstate commerce. If one had a right from the Crown to operate a stage coach,

it carried with it the right to stop to receive and discharge its passengers. No one would claim that a stage coach or omnibus could be operated on the streets of Hammond without a grant from someone, or against the prohibition to do so without a franchise. The other theory would mean that the franchise was without value, and mere empty words. A merchant, as an incident of his business conducted on private property, may receive and discharge goods at the curb adjacent to his place of business, and may run over the streets for the purpose of receiving and delivering goods, but if he made the streets his principal place of business, it would raise another question. Petitioner concedes that within reasonable limits, that is, without undue restriction as to route, an interstate carrier may haul his passengers freely over the highways between his *termini*, but insists upon the right to say whether such passengers may be received and discharged upon its streets. At least there is nothing in the Fourteenth Amendment to give an interstate carrier such a right.

Packard vs. Banton, 264 U. S. 140.

III.

THE DIFFERENCE BETWEEN RESPONDENT AND A FRANCHISE CARRIER.

The Respondents persistently assert a theory which amounts to this, though probably they would hardly state it so abruptly, that a municipality cannot give a right to a franchise carrier to do that which cannot be done by others at will. It seems that this was the theory adopted by the Court of Appeals. It held

that a police regulation must apply to all alike, overlooking, as Petitioner most emphatically asserts, the difference between the general police power and a mere police regulation. The general police power gives authority to grant franchises, but this means the power in its broadest sense, and not the mere patrolling of streets. Over and over the authorities declare that there is no inherent right to transact business in a street.

Denny vs. City of Muncie (Ind. Sup. Ct.) 149 N. E. 639. When a franchise is granted, a contract is entered into to render a public service, and it is upon the basis of the public welfare that it is granted, and this is not limited to an inquiry into such questions as to whether the streets are congested or not. It is a question of what service is to be rendered the public, and of this the city is the judge. Respondent's position is that though a franchise be granted to operate omnibuses in a street, and there is room for others that have no franchise, the city cannot keep them off.

In support of their contention that the ordinance is discriminatory, Respondents rely upon *Yick Wo vs. Hopkins,* 118 U. S. 356, and similar cases. They forget the distinction between the power of a municipality merely to regulate, and the power to prohibit, with its incidental power to permit on any terms, however arbitrary.

Packard vs. Banton, 264 U. S. 140.
Cusack Co. vs. Chicago, 242 U. S. 526.

CONCLUSION

When the controversy in this case is properly focused, there are but two questions (Petitioner's brief p. 16):

1. Whether Section 1 of the ordinance puts an undue burden on an interstate carrier, by denying him his unrestricted choice of streets for the purpose of movement. Petitioner insists upon a negative answer to this question.

   Denver & R. G. R. R. vs. Denver, 250 U. S. 241.

2. Whether, as an incident to the right of passage under the Commerce clause, the carrier may use the streets to receive and discharge his cargo. Petitioner insists this should also be answered in the negative.

   James Gray vs. John Fraser, 62 U. S. 195.

While the police power of the state was surrendered to the Commerce clause to the extent of permitting passage without undue restriction, it was never contemplated that this carried with it a surrender of the purely local question of regulating or prohibiting the use of streets as the principal place of conducting private business, for the conduct of business in a street is not a matter of right.

Gilmer vs. Public Util. Comm. of Utah, 247 Pac. 284;

The Commerce clause avails nothing, for it, as all other provisions of the Constitution, protects only rights.

Respectfully submitted,

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LOUDEN L. BOMBERGER,
GLENN D. PETERS,
JOHN A. GAVIT,
CLYDE CLEVELAND,
Attorneys for Petitioner.

FILED
OCT 6 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1927.

NO. 68

CITY OF HAMMOND, LAKE COUNTY, INDIANA,
A MUNICIPAL CORPORATION,
Petitioner,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY, A CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF PETITIONER IN ADDITION TO THE BRIEF FILED IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

C. B. TINKHAM,
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Attorneys for Petitioner.

HAWKINS & LOOMIS CO., LAW PRINTERS, CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1927.

No. 68

CITY OF HAMMOND, LAKE COUNTY, INDIANA,
A MUNICIPAL CORPORATION,
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vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY, A CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF PETITIONER IN ADDITION TO THE BRIEF FILED IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

The opinion delivered by the United States circuit court of appeals, seventh circuit, is reported in 11 F. (2d) 943, and is found on page 83 of the record filed in this court. The circuit court of appeals wrote no opinion except to refer to its decision in the case of *Schappi Bus Line, Incorporated* v.

City of Hammond, 11 F. (2d) 940, now pending in this court under No. 67. The latter case was decided on the same day (March 12, 1926), and in both of these cases the circuit court of appeals ordered the district court to enter a decree granting the injunction which had been refused in the district court. (R. 83.)

For a statement of the grounds on which jurisdiction is here invoked; a statement of the case; and the errors assigned, the petitioner respectfully refers to its brief filed herein in support of the petition for a writ of certiorari.

BRIEF OF ARGUMENT.

The law and facts which control the decision of this case are the same as in the case of *City of Hammond, petitioner, v. Schappi Bus Line, Incorporated, respondent*, No. 67 of this court. Therefore the petitioner in this case respectfully refers to and adopts, as its brief and argument in this case, the additional brief and argument filed in the *Schappi* case at this term by this petitioner.

This record presents the same error of fact that appears in the *Schappi* case, namely, a finding by the circuit court of appeals that respondent is a corporation of the state of Indiana. The record shows the contrary and that jurisdiction is invoked in the bill filed in the district court solely on the ground of diversity of citizenship. (R. 1.)

Petitioner respectfully submits that the decree of the circuit court of appeals in this case should be set aside, and the decree of the district court affirmed.

Respectfully submitted,

C. B. TINKHAM,
LOUIS T. MICHENER,
GERALD GILLETT,
Attorneys for Petitioner.

Supreme Court, U. S.
FILED
JUN 7 1926
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1925.

No. 12[redacted]386

CITY OF HAMMOND, LAKE COUNTY, INDIANA,
A MUNICIPAL CORPORATION,
Petitioner,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY, A CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

SUGGESTIONS OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1925.

No. 1229

CITY OF HAMMOND, LAKE COUNTY, INDIANA, A MUNICIPAL CORPORATION,

Petitioner,

vs.

FARINA BUS LINE AND TRANSPORTATION COMPANY, A CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

SUGGESTIONS OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

The petition for writ of certiorari should be denied because:

(a) The decision of the United States Circuit Court of Appeals is clearly within the scope of principles established by the decisions of this court.

(b) The decision is not in conflict with local laws.

(c) Ordinance 1945 is unconstitutional under the Fourteenth Amendment and the commerce clause of the Constitution of the United States.

(d) The ordinance illegally interferes with rights granted respondent by the State of Indiana.

STATEMENT OF FACTS.*

The opinion of the United States Circuit Court of Appeals was filed on March 12, 1926. It is not yet reported, but is set out on page 83 of the record.

This opinion does not set out a statement of the facts involved in this case. The statement made by petitioner, in its petition for a writ of certiorari filed in this court, entirely ignores many of the salient facts. This case is essentially a fact case. Respondent insists that ordinance 1945 of the City of Hammond attacked is unconstitutional; that it is in excess of the powers of the city, is invalid as a denial to respondent of due process of law and the equal protection of the laws, and is an unwarranted burden upon and discrimination against interstate commerce. To approach the problem of determining these questions, the court must have before it all the relevant facts and circumstances under which the ordinance questioned was enacted and is enforced. Respondent deems it essential, therefore, to set out fully the essential facts of this case.

Respondent is an Illinois corporation, engaged for four years before the commencement of this action in the operation of motor busses carrying passengers for hire interstate from certain towns in the State of Illinois into the City of Hammond, Indiana, and intrastate between the village of Munster, Indiana and Hammond, Indiana.

*NOTE: Petitioner in this case refers to and adopts, as his brief and argument in this case, a brief in support of the petition for writ of certiorari filed in the case of *City of Hammond* v. *Schappi Bus Lines, Inc.* For this reason, references are made in this brief to the brief filed with the petition in the *Schappi* case.

Throughout this statement and argument, where any quoted words or sentences are italicised, the italics are ours unless otherwise noted.

Respondent does not haul passengers between points within the City of Hammond but exclusively to and from points in the City of Hammond to and from the town of Munster in Indiana and the various towns served in the State of Illinois. (R. 15-16.) Respondent's operations are upon a definite regular schedule. (R. 17.) At the time of the commencement of this action, respondent brought, on an average, 600 passengers a day into Hammond, over 500 of which were interstate passengers from the Illinois towns. (R. 16.)

Respondent has complied with all the laws of both states relative to licenses for, and registration of, its motor busses and chauffeurs. (R. 16.) It has developed a profitable business with a substantial good will among the people who travel. Its lines supply the only transportation service between the Illinois towns and the City of Hammond, Indiana, and are a convenience and advantage to the people served in both towns. (R. 16.) An important part of its haul into Hammond is to accommodate residents of the Illinois towns coming to the down town district of Hammond to trade. (R. 2, 12.) It serves also many people traveling between Illinois and the Village of Munster and the southern part of Hammond. (R. 18-19.)

Respondent also operates in conjunction with Gary Street Railway Company. The Railway Company operates a line of street railway from Gary, Indiana, into Hammond. It also operates a line of busses into Hammond from points east and south. The depot or terminus for these operations is on Sibley street and is used in common by both companies. It is a general transfer point and many through passengers from Gary, by way of street cars and busses, are carried into the Illinois

towns by respondent's route by means of transfers. (R. 52.)

In its interstate operations, respondent is operating by virtue of its rights as defined by this court in *Buck* v. *Kuykendall*, 267 U. S. 307. In its intrastate operation in Indiana, respondent operates under a certificate of public convenience and necessity issued by Public Service Commission of Indiana, under Indiana Acts of 1925 c. 46, Sec. 2, p. 139, to respondent as a ninety day operator. (R. 16-17, 53.) (See p. 30, *supra*.)

The map, at page 44 of the printed record, shows, by the line drawn in pink, respondent's route and the location of the City of Hammond with adjacent cities in Indiana and Illinois. The Indiana-Illinois state line is the western boundary of the City of Hammond; its northern boundary is Lake Michigan; its southern boundary the Little Calumet River, and to the east and adjoining Hammond lie the cities of Whiting, East Chicago and Gary.

Hammond extends approximately nine miles north and south from the lake to the river; five miles east and west from the state line to the Gary limits in that portion of the city south of the Grand Calumet River, and from one and one-half miles to two miles east and west in that part of the city north of the Grand Calumet River. (R. 49, 51.)

The city has a population of 40,000 lying principally between the state line and Calumet avenue, a mile east thereof, and between Gostlin street on the north and Standard avenue on the south. There are, within the city limits, many streets in open, unoccupied territory and upon which there are no improvements at all, and many streets upon which there are few improvements. (R. 51-52.)

The town of Munster lies immediately south of Hammond and borders on the state line. Hohman street is the principal north and south street running through the residence and business districts of Hammond. It runs parallel to, and one block east of, the state line and continues south from Hammond through the town of Munster to an east and west highway, known as Ridge road, extending through Munster and westerly into the Illinois towns served by respondent. (R. 17, 49, 63.)

Hohman street is 80 feet in width, well paved. (R. 26, 23.) From the Little Calumet River north to Standard avenue, a distance of over a mile, it runs through open and sparsely settled country which is being built up as a residence district. North of Standard avenue it continues through the residence section of Hammond (R. 17-18) to the streets marked in pink on the map. (R. 49.) Hohman street is the direct route from the Illinois towns south of Hammond. (R. 21.) The only north and south streets from Ridge road into Hammond other than Hohman street are Calumet avenue, one mile, and Columbia avenue, one and one-half miles, east of Hohman street. (R. 17.) These streets are not reasonably usable by a carrier operating from Illinois into Hammond. (R. 17-18.) The down-town or business district of Hammond is principally on Hohman street north of Russell street and Sibley and State streets—the portion colored in purple on page 63 of the printed record.

There is a highway on the state line, but that is not improved as far south as Munster. (R. 21-23.) It is open from 21st Avenue north to the Michigan Central Railroad tracks in Hammond, but is not so that it can be used except north of Standard avenue, and

even over that part north of Standard avenue the pavement is not suitable for automobile traffic. (R. 21-23.)

On May 23, 1925, the ordinance here assailed was adopted. (R. 46-47.) This ordinance recites:

> "that in order to promote public safety and order and to diminish the congestion of vehicular travel within said city * * *"

By Section 1 it makes it unlawful to operate any motor vehicles over certain streets of the city. These streets are marked in purple on the map. (R. 63.) This section prevents operation into the business center of the city.

Section 2 of the ordinance makes it unlawful for any operator *to stop for the purpose of receiving or discharging passengers* upon *any* street, alley or other public place in the city,

> "provided that the Board of Public Works may, for any period not exceeding six (6) months or successions thereof, permit such operation on any or all of the following designated parts of streets; Columbia avenue between the south city limits and the right-of-way of the Michigan Central Railroad where the same crosses said Columbia avenue; Sibley street from Columbia avenue to the easterly line of the right-of-way of the Chicago, Indianapolis & Louisville Railway Company; State Line street from its southerly terminus to its northerly terminus at or near the right-of-way of said Michigan Central Railroad aforesaid; Rimbach avenue from State Line street to Ann street; Ann street from Rimbach avenue to Russell street; Russell street from Ann street to State Line street; and for vehicles engaged strictly in interstate commerce, any street or other public place north of 122nd street and east of Calumet avenue."

The streets to which the board of works may permit "such operation" under this proviso, are marked green on the map at page 63 of the record. No permit can

be granted for any part of Hohman street. (R. 17.) Even if granted such permits as the ordinance allows, respondent could not continue its route without great financial loss and inconvenience to the public traveling over its line. (R. 19.)

Section 3 of the ordinance imposes penalties for its violation, and provides that,

> "nothing in this Ordinance shall be construed to impair the obligation of any contract to which the City is a party, under which such motor vehicles are now operated for hire within said City."

Shortly prior to the adoption of this ordinance, the city had assumed to grant a franchise to one Miner, trustee. This franchise permitted operation of motor busses on every street in the city. Miner transferred his franchise to Calumet Motor Coach Company. That company operates the same type and size of bus as respondent. (R. 19.) Most of this operation was entirely within the city, but certain routes extended to East Chicago, Indiana and to the City of Chicago, Illinois. Ordinance 1945 has never been enforced against Calumet Motor Coach Company and it is permitted to run any of its busses upon all streets in the city and to stop anywhere to take on or discharge passengers. (R. 19.)

On May 25, 1925, two days after the ordinance was passed, respondent applied to the board of public works for a permit to operate over all the streets upon which the board might permit of operation under section 2. On June 12 the board arbitrarily declined to grant the request, but offered respondent, upon unacceptable conditions, a permit to stop to take on and let off passengers for a period of thirty days on the route shown by the green line on the left-hand side of the map at page 63 of the printed record. (R. 18.) Respondent

declined to accept the permit and asked for a permit, as described at page 52 of the record. If permitted so to operate, respondent would not be running on any streets marked in purple. (R. 63.) It would be unable to discharge and receive passengers on Hohman street but could do so after it left that street and could at least continue to carry on its through business exchange from the Gary lines and busses and to operate with the added efficiency, economy and convenience to the traveling public resulting from the connection of these lines at a common terminal transfer point. This requested permit, however, the board arbitrarily declined to issue. (R. 52.) Petitioner city proceeded to enforce the ordinance against respondent and to arrest respondent's drivers. To protect itself from these arrests, respondent commenced this suit.

ARGUMENT.

As the statement of facts shows, respondent, both in its interstate and intrastate commerce, was by Ordinance 1945 prevented from reaching its terminal or the down town district of petitioner city; it was prevented from stopping even momentarily to receive and discharge passengers upon any of the streets of the city except to a limited extent in the event that it could procure a permit from a board left with wholly abitrary powers. Even if a permit could be secured, the routes to which such permit could apply were distant and out of the way from any direct, convenient or feasible route between Hammond and the Illinois towns served by respondent.

Against the enforcement of the ordinance, respondent sought an injunction to protect its interstate and intrastate business. The right of respondent to engage in interstate business is furnished under the commerce clause of the Federal Constitution and respondent claims protection from arbitrary interference under the commerce clause of the Federal Constitution and under those sections of the Fourteenth Amendment preventing the deprivation of its property without due process of law and a denial of equal protection of the laws. Respondent's intrastate business was carried on under a ninety-day certificate of public convenience and necessity issued by Public Service Commission of Indiana in compliance with the proviso of Acts of Indiana, 1925, c. 46, sec. 2, p. 139. (See p. 31, *supra.*) Protection of this business is claimed upon the ground that petitioner exceeded its powers in interfering with opera-

tions under this certificate and upon the further ground that the ordinance was invalid as violating the provisions of the Fourteenth Amendment above referred to.

There is obviously nothing to petitioner's assertion that respondent relied upon the privilege and immunities clause of the Fourteenth Amendment. (Petn. 10.) Respondent invoked the protection of the due process clause and the equal protection of the laws clause of the amendment. (R. 4-6, 67-72.) The error of the Circuit Court of Appeals in stating in the *Schappi* decision that the Schappi Bus Lines, Inc., was an Indiana corporation was wholly immaterial to the result of the case. It is settled that these clauses apply to protect corporations and that a foreign corporation when lawfully carrying on business in a state is entitled to invoke against state discriminations the protection afforded by these clauses of the Fourteenth Amendment.

Southern Railway Co. v. *Greene*, 216 U. S. 400, 412-3.

Smyth v. *Ames*, 169 U. S. 466, 522.

Gulf, Colo. & Santa Fe Ry. Co. v. *Ellis*, 165 U. S. 150, 154.

The United States Circuit Court of Appeals held the ordinance invalid as to all operations of respondent and set out in its opinion the reasons that the ordinance could not be sustained as a police regulation.

This case does not involve the city's legal control of common carriers in the abstract. It is not a question as to what ordinances the city *might* have legally adopted, but whether the ordinance in question is within its powers. The ordinance upon its face purports to be an exercise of the police power to promote safety and to relieve congestion in the streets. It does not purport

to be a licensing act. In this state of the record, the Circuit Court of Appeals based its decision upon two grounds only, first, that the ordinance is discriminatory in that it does not apply to all motor bus carriers alike; and, second, that it is an unreasonable exercise of the police powers. The principles of law underlying the decision, namely, that police regulations must be reasonable and uniformly applied within the class, can scarcely be disputed. The case is largely one of fact, and the Circuit Court of Appeals very properly held, upon the record before it, that the city was in a police regulation discriminating in favor of the Calumet Motor Coach Company against all other motor carriers and was seeking to impose unreasonable restrictions and burdens upon the respondent as a carrier operating in and out of the city in purely interurban and interstate operation. This decision is clearly sustained by the applicable principles of law.

Petitioner, however, seeks a writ of certiorari to that court upon the theory that the ordinance was not a "police regulation" but was a proper exercise of the so-called "general police power to prevent the use of streets" "without an express grant" (Petn. 5, 15) and therefore the case was wrongly decided. Even if the ordinance of the city was enacted upon the basis now claimed by petitioner, still the result reached by the Circuit Court of Appeals should be the same.

Respondent's reply will show first that the decision of the Circuit Court of Appeals is clearly sustainable in that the ordinance attacked violates the commerce clause and the Fourteenth Amendment of the Federal Constitution. Thereafter respondent will point out briefly that the decision is not in conflict with the Indiana statutes or the Indiana decisions.

I.

THE CIRCUIT COURT OF APPEALS WAS CORRECT IN FINDING THAT ORDINANCE 1945 WAS NOT A CONSTITUTIONAL EXERCISE OF THE POLICE POWER OF PETITIONER.

Petitioner apparently concedes that if the ordinance is, as the ordinance itself states, an attempted police regulation, it is unconstitutional and the decision of the Circuit Court of Appeals is correct. Throughout the petition there is no claim that if the ordinance is a measure regulating legitimate users of the highway it can be sustained under the police power of the city to regulate. If the Circuit Court of Appeals was justified in treating this ordinance as an attempted police regulation, it is in effect conceded by petitioner that the case was correctly decided.

The Circuit Court of Appeals was justified in finding that ordinance 1945 was an attempted police regulation and that as such it was an illegal exercise of the police power and in excess of constitutional limitations. The ordinance is and was intended to be a discriminatory, regulatory measure. The ordinance itself recites that it is adopted "in order to promote public safety and order and to diminish congestion." The Circuit Court of Appeals, after a study of the briefs and after listening to oral argument, said in its opinion in the *Schappi* case:

> "we are of opinion that the ordinance cannot be sustained as a police regulation,—*and it is not claimed that it can be sustained upon any other theory.*" (Schappi Record, p. 101.)

Petitioner city cannot now be heard to assert that its ordinance was not an attempt at regulation in the exercise of guarding the public safety and convenience, but

was the exercise of some different power. This court will not take cognizance of this case to allow petitioner to advance a new and different claim disputing the recital of the ordinance itself.

The opinion that ordinance 1945 cannot be sustained as a constitutional exercise of the power of police regulation is clearly a correct one. It is adequately supported by the authorities.

A.

THE ORDINANCE IS AN UNREASONABLE REGULATION. IT DEPRIVES RESPONDENT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

We pass over petitioner's argument that respondent has no property right in the streets. (Schappi Petn. 25-27.) The decision in this case does not decide respondent has any such right. Nor does respondent claim such right. Respondent claims only protection against illegal and unconstitutional interference with, and arbitrary discrimination against, its lawful use of the highways in interstate commerce and in intrastate commerce.

The prohibitions of the ordinance are arbitrary and unreasonable and beyond the necessities of the case. The enforcement of them is unnecessarily destructive of the business of respondent, both as an interstate and intrastate carrier, and constitutes a taking of the property of respondent without due process of law.

Most of the prohibitions created have no tendency whatever to accomplish the prevention of any congestion or the promotion of any public convenience and safety. The prohibition against receiving or discharging passengers on any streets of the city (most of which streets are in resident, factory or sparsely settled territories),

except upon obtaining a permit that may be arbitrarily withheld; the limiting of streets upon which permits may be granted to streets which are unfit for motor bus traffic or which require two miles of roundabout, unnecessary travel; the denying of the right to stop momentarily to take on or discharge passengers at any point on Hohman street, even though most of a route over that street is over sparsely settled and residence territory and the street is 80 feet in width; the limiting to a single street in the extreme northeast of the city the right of purely interstate carriers to take on and discharge passengers; arbitrarily preventing respondent from reaching its common terminal,—these burdens of the ordinance are so obviously unrelated to any alleged protection of public safety and prevention of congestion that it is indisputable that the Circuit Court of Appeals was correct. The ordinance is but an arbitrary exclusion. The alleged regulation is wholly unreasonable. It is beyond the necessities of the case with which it recites that it treats.

The principle of reasonableness in police regulation is a principle of proportionateness. The courts have wisely recognized the principle that the legislative acts under the police power must have some fair and reasonable relation of means to end which the courts can see and admit the force of. The infringements of rights must bear a reasonable relation to the public necessity and to the end in view. Mere labels of "public safety", "public welfare" and the like cannot blind the court to the real relationship between the burden and limitation created and the end to be achieved.

Welch v. *Swasey*, 214 U. S. 91, 105.

C. B. & Q. Railway v. *Drainage Comm'rs*, 200 U. S. 561, 592-3.

Matter of Jacobs, 98 N. Y. 98, 110.
Ex Parte Whitwell, 98 Calif. 73, 78-9.
State v. *Ashbrook*, 154 Mo. 375, 385-6.

It has often been declared by this court that the test of a constitutional exercise of the police power is: whether the means employed have a real substantial relation to the end to be accomplished; whether the act is beyond the necessities of the case. This court has never hesitated to assert that if an enactment is palpably unreasonable, arbitrary and unnecessarily destructive of private rights, it will be declared invalid.

Welch v. *Swasey*, 214 U. S. 91, 105.
Lochner v. *New York*, 198 U. S. 45, 56.
Jacobson v. *Massachusetts*, 197 U. S. 11, 28.
Minnesota v. *Barber*, 136 U. S. 313, 320.
Mugler v. *Kansas*, 123 U. S. 623, 661.

Tested by any of these standards, this ordinance cannot be sustained.

B.

THE ORDINANCE IS INVALID AS A DIRECT AND UNWARRANTED BURDEN ON INTERSTATE COMMERCE.

The ordinance, even as an alleged police regulation, unduly and unnecessarily burdens and controls interstate commerce. It is a direct burden and limitation upon interstate commerce. It is, therefore, invalid.

In a situation which involves the exercise of the police power imposing restraints upon a carrier in interstate commerce, the court will scrutinize carefully the protection to be attained and the burden imposed. In such cases there is a conflict between the powers lodged by the Constitution in Congress and the rights of police

protection retained by the states. The question is whether the former has been improperly or unnecessarily invaded by the attempted exercise of the latter.

These principles are clearly expressed in *Railroad Co.* v. *Husen*, 95 U. S. 465, where the State of Missouri attempted under an alleged police regulation to control the transportation of cattle into and through the state. This court there said, pages 472-473:

> "Neither the unlimited powers of a State to tax, nor any of its large police powers, can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution. * * * it (a state) may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce. * * * They" (certain cases discussed) "deny validity to any State legislation professing to be an exercise of police power for protection against evils from abroad, which is beyond the necessity for its exercise wherever it interferes with the rights and powers of the Federal government."

And, after referring to decisions of certain state courts, this court continued, pages 473-4:

> "those courts have refused to inquire whether the prohibition did not extend beyond the danger to be apprehended, and whether, therefore, the statutes were not something more than exertions of police power. That inquiry, they have said, was for the legislature and not for the courts. With this we cannot concur. The police power of a State cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and under color of it objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of

the courts to guard vigilantly against any needless intrusion."

This rule is comprehensively stated in *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197. This court said, p. 201:

> "Through a long series of decisions dealing with the scope and effect of the commerce clause it has come to be well settled that a State, while possessing power to adopt reasonable measures to promote and protect the health, safety, morals and welfare of its people, even though interstate commerce be incidentally or indirectly affected, has no power to exclude from its limits foreign corporations or others engaged in interstate commerce, or by the imposition of conditions to *fetter their right to carry on such commerce, or to subject them in respect to their transactions therein to requirements which are unreasonable or pass beyond the bounds of suitable local protection.*"

The police power of the state cannot obstruct interstate commerce beyond the necessity of its exercise, and it is the duty of courts to see that, under color of it, objects not within its scope be not secured at the expense of federal guarantees. A state cannot control and regulate interstate commerce under "the convenient apologetics of the police power." This principle the United States Circuit Court of Appeals has wisely and properly applied.

Kansas Southern Ry. Co. v. *Kaw Valley Dist.* 233 U. S. 75.

Brennan v. Titusville, 153 U. S. 289, 299-302.

Voight v. *Wright*, 141 U. S. 62, 66.

Bowman v. *Chicago etc. Railway Company*, 125 U. S. 465, 488-493.

Henderson v. *Mayor of New York*, 92 U. S. 259, 271-2.

Chy Lung v. *Freeman*, 92 U. S. 275, 280.

Nor is the complaint that the Circuit Court of Appeals looked at the natural effect and result of the ordinance and not merely at the words of the ordinance, tenable. (Petn. 12.) Courts will always look to the real purpose and natural and practical effect of the operation of the statute. They will always consider the manner of enforcement. If that real purpose or that practical effect is to establish a restriction unnecessary or unrelated to the protection or undesigned to accomplish it, or if the practical effect is to infringe upon the federal powers, the act cannot be sustained.

In *Mugler* v. *Kansas*, 123 U. S. 623 this court said, p. 661:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty—indeed are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Yick Wo v. *Hopkins*, 118 U. S. 356, 373-4.
Minnesota v. *Barber*, 136 U. S. 313, 326.
Brimmer v. *Rebman*, 138 U. S. 78, 83.
Henderson v. *Mayor of New York*, 92 U. S. 259, 268, *supra*.

C.

THE ORDINANCE IS FLAGRANTLY DISCRIMINATORY. IT DENIES RESPONDENT EQUAL PROTECTION OF THE LAWS.

The attempted classification under the ordinance is arbitrary and renders it invalid as denying to respondent equal protection of the laws.

The attempt to make, for the regulatory purposes of promoting safety, public welfare and convenience, a classification between carriers franchised by the city, on the one hand, and carriers franchised by the state and operating interstate under the rights created by the commerce clause of the United States Constitution, on the other hand, is wholly arbitrary and an unjustifiable basis of classification. The carrier who secures a franchise from the city may carry on his interstate commerce into the city without restriction or limitations. A second interstate carrier doing a like business is restricted or prohibited.

Recognized differences and distinctions in fact and in relation to the purpose of the act alone furnish a basis for proper classification. Thus, for many purposes of police regulation, common carriers for hire may be grouped as a class and regulated differently than other users of the public highway. But the separating, in regulations to promote public safety and order of lawful operators of motor busses for hire, upon the basis that some obtain their right from the municipality and some from the state and others from the Federal Government—and the imposing of police restrictions upon the last group or the last two groups only is not proper classification to protect public safety and diminish congestion.

Classification to be supported must be based upon

some real difference *with reference to the purposes of the act.*

Atchison, Topeka & Santa Fe Ry. v. *Vosburg,* 238 U. S. 56, 59.

Southern Railway Co. v. *Greene,* 216 U. S. 400, 417.

Giozza v. *Tiernan,* 148 U. S. 657, 662.

Minneapolis Railway Company v. *Beckwith,* 129 U. S. 26, 28-31.

Bullock v. *Robinson,* 176 Ind. 198, 204.

School City of Rushville v. *Hayes,* 162 Ind. 193, 200, 202-4.

Where attempted classification is unnatural and arbitrary, it is invalid.

Gulf, etc., Ry. v. *Ellis,* 165 U. S. 150, 155-6.

Nicol v. *Ames,* 173 U. S. 509, 521.

Connolly v. *Union Sewer Pipe Co.* 184 U. S. 540, 563-4.

Yick Wo v. *Hopkins,* 118 U. S. 356.

Harrigan & Reid Co. v. *Burton,* 224 Mich. 564, 569.

Bessette v. *The People,* 193 Ill. 334, 347-8.

The Calumet Motor Coach Company, whether in its local, interurban or interstate business, is permitted to run and stop upon all the streets in the city. It contributes more to congestion than all other bus operators. Respondent, in its motor bus operations, is excluded from the down town districts and restricted in its operation elsewhere. This is an unjustifiable discrimination.

If, in the public convenience and safety, it is necessary that busses be prevented from stopping to take on or discharge passengers, then the Calumet Motor Coach

Company cannot be permitted so to do. Applying these alleged safety regulations against respondent and not against another person engaged in the same business is an unjustifiable discrimination. Classification between respondent and Calumet Motor Coach Company and the treating of the two bus operators differently bears no relation to protecting public safety and convenience. Distinguishing the manner in which the one may use the streets and may be upon the highways and the manner in which the other may use the streets and be upon the highways is wholly arbitrary. The burden cast upon respondent is not cast upon another who must be in a similar class as far as restrictions for the protection of safety and public welfare are concerned.

The ruling of the Circuit Court of Appeals that ordinance 1945 was enacted in violation of the constitutional guarantees was in accord with the principles repeatedly enunciated in the decisions of this court. It furnishes no basis for the granting of the petition for writ of certiorari.

II.

THE ORDINANCE IS INVALID AS AN ATTEMPT BY PETITIONER TO CONTROL INTERSTATE COMMERCE AND TO DETERMINE WHO MAY ENGAGE THEREIN. IT IS A DIRECT AND UNWARRANTED BURDEN ON INTERSTATE COMMERCE.

Even assuming petitioner's present interpretation of its ordinance,—that the ordinance is an exercise of a so-called general police power to prohibit using the highways without obtaining a franchise from the city—still the ordinance is invalid. So interpreted, it constitutes an attempt by petitioner to determine who may engage

in interstate commerce and invades the province of control reserved entirely to the Federal Government.

One reason advanced by petitioner for urging the granting of this petition is that the opinion of the Circuit Court of Appeals did not discuss the question whether ordinance 1945 was invalid as an unwarranted interference with interstate commerce. This question was fully presented to the Circuit Court of Appeals in the briefs there filed, and in oral argument. Petitioner seems to have the idea that, even though the case were properly decided, this court will review the decision because the Circuit Court of Appeals did not discuss the interstate commerce feature of the case.

Petitioner now strenuously insists that the ordinance was not passed for the purpose which it recites but is sustainable as "an exercise of the general police power to prevent the use of the streets" by "a common carrier without an express grant or franchise" by the city. (Petn. 5, 15.) The argument is that no motor vehicle common carrier has any right to use the streets or highways of Hammond without the consent and authority of the city. Petitioner admits the arbitrary discrimination but contends that the "general police power" extends to prevent the use of the streets by a motor vehicle common carrier without express franchise from the city. This premise projects from every contention that petitioner makes. It is equally prominent in the ordinance itself,—on the face and in the manner of enforcement. The effect of this ordinance is at once apparent. The Calumet Motor Coach Company, holding a franchise, or any carrier who can obtain a franchise, from the city may engage in interstate business into Hammond in a manner different from and without restrictions placed upon other interstate carriers. It asserts the power of

the city to determine what persons shall haul interstate. It asserts the power of the city to make the rights of one interstate carrier greater than those of another. In the first statement of the case, after referring to respondent's operations, it is stated (Petn. 2):

> "While respondent was so operating, *without right* and without hindrance,"

And under the second of "Reasons for the Issuance of the Writ" it is asserted (Petn. 4) that the ordinance was not a police regulation but was

> "an exercise of the general police power to prevent the use of streets for the conduct of the private business of a common carrier without an express grant or franchise."

And, on page 10, petitioner insists that the Circuit Court erred by not sustaining the claim that petitioner had power

> "to *prevent the use* of its streets for the private business of *hauling* passengers as a common carrier by motor vehicle."

On page 15 it is again asserted that the Circuit Court was in error by not recognizing the power of petitioner

> "to determine in the first instance, what, if any, carrier, should be permitted to use the streets."

And in the brief attached to the petition for writ of certiorari in the case of *City of Hammond* v. *Schappi Bus Lines, Inc.* (incorporated by reference as a part of the brief in this case) petitioner devotes several pages to elaborating this claim (Schappi Petn. 23-25) and in conclusion asserts that the ordinance

> *"does not seek to regulate those having rights to do business in the street"* but ends *"unauthorized operation."* (Italics are petitioner's.)

It follows, petitioner insists, that respondent, if allowed to operate, may be subjected to any terms which

petitioner wishes to make; and respondent cannot object that they are discriminatory and arbitrary.

Petitioner's position is apparently taken upon the strength of language in the case of *Packard* v. *Banton*, 264 U. S. 140, 145. It is apparently because of this case that petitioner has denied that the ordinance is, as asserted in the ordinance itself, a police regulation. But the *Packard* case has been misunderstood by counsel. That case presented no question of the attempt by the state or its agency to exclude or discriminate against or put an unwarranted burden upon an interstate carrier or to make arbitrary discriminations between various interstate carriers. Yet all these things are the things which petitioner claims it has the power to do. Furthermore, the *Packard* case recognized that, in regulating, the Fourteenth Amendment prevented arbitrary discrimination within the class. (p. 144.)

Petitioner's attitude of mind has distorted its entire conception of the force of the provision of the Federal Constitution giving to Congress alone the power to control and regulate interstate commerce. The fallacy of petitioner's position has been but recently re-exposed by this court.

Buck v. *Kuykendall*, 267 U. S. 307.
Bush v. *Maloy*, 267 U. S. 317.

The very argument which petitioner makes was urged upon this court in the argument of the *Buck* case. Mr. Justice Brandeis thus states it, page 314:

> "In support of the decree dismissing the bill this argument is made: The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. Compare *Crandall* v. *Nevada*, 6 Wall. 35. A citizen may have under the Fourteenth Amendment, the right to travel and transport his property upon them by auto vehicle. But he has no

right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the State in its discretion * * *."

Mr. Justice Brandeis then says, page 315:

"The argument is not sound."

He then continues:

"It may be assumed * * * that appropriate state regulations adopted *primarily* to promote safety upon the highways and conservation in their use are not obnoxious to the Commerce Clause, where the indirect burden imposed upon interstate commerce is not unreasonable. * * * The provision here in question is of a different character. Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner. Moreover, it determines whether the prohibition shall be applied by resort, through state officials, to a test which is peculiarly within the province of federal action—the existence of adequate facilities for conducting interstate commerce."

Petitioner seeks to cast aside the decisions of this court by contending that it is not prohibiting running over its streets, but starting and stopping to take on or let off passengers. (Petn. 12; Schappi Petn. 35-40.) This prohibition, it says, is not a prohibition of anything the interstate carrier has a right to do. The prohibition is one that may be made in any discriminatory and arbitrary manner. It will be noted that the prohibition is not one of parking restrictions or parking prohibitions. It is a contention that momentary stopping upon the streets is not an incident of the right to travel over the streets,—is so wholly foreign and unrelated to interstate commerce as to be wholly outside the control of the

Federal Government in its regulation and control of that commerce.

This contention is palpably unsound. It is based upon a twist of mind seeking to catch at some device to control, indirectly, the thing which cannot be controlled directly. It is unsupported by authority.

That stopping in a reasonable manner and for a reasonable time to load and unload passengers being carried over the public highways is an essential and necessary part of transportation over the highways, and an inseparable incident thereto, is fully established by uniform authorities.

In the early English case of *Rex* v. *Cross*, 3 Camp. 224, the court, after considering its prior holding in *Rex* v. *Russell*, 6 East, 427, said, p. 227:

> "Every unauthorized obstruction of a highway to the annoyance of the King's subjects, is a nuisance. The King's highway is not to be used as a stable-yard. * * * A stage coach may set down or take up passengers in the street, this being necessary for public convenience; but it must be done in a reasonable time, and private premises must be provided for the coach to stand while waiting between one journey and the commencement of another."

In 2 Elliott on Roads and Streets, 3rd Ed., Par. 1100, the author says:

> "Travelers, whether on foot or in carriages have a right to stop a reasonable time by the roadside for their own convenience, provided they do not unduly interfere with the rights of others. *Thus, hacks and omnibuses may stop to load and unload passengers.*"

See also:

Callanan v. *Gilman*, 107 N. Y. 360, 365.

Smethhurst v. *Proprietors of Independence Congregational Church*, 148 Mass. 261, 266.

13 Ruling Case Law "Highways", Sec. 186, pp. 220-1.

Parker v. *Silverton*, 109 Ore. 298, involved an attempt by a city to prohibit a motor carrier doing an intrastate business under a certificate from the state from taking on or letting off passengers on any streets in the city except upon payment of a prohibitive tax. The Supreme Court of Washington held that this regulation could not be enforced. It said, 304-5:

> "To receive and discharge passengers upon the public streets of the city is an essential and necessary part of the transportation by automobile busses of passengers from one place to another, and when this is being done in the usual and customary way, under a permit regularly issued by the Public Service Commission, it is not within the power of the municipality to prevent or prohibit it."

Certainly under the decisions of the United States Supreme Court an interstate carrier has at least as great a protection against municipal interference as a carrier operating under a certificate from the state.

What the petitioner is really trying to do by this ordinance is to nullify the decision of this court in the *Buck* case and to determine itself what carriers may engage in interstate commerce within the city limits of Hammond. Petitioner's argument is:

The United States Supreme Court has said we cannot stop the actual passage of an interstate carrier for hire into or through the city. But we can cast any other burden on such a carrier. We can burden and discriminate against him. We can stop the passage of an interstate carrier if we go about it in an indirect manner.

This court will, of course, recognize the untenability of this position. This court, following in the *Buck* decision the principles of its prior decisions, was not merely saying that the state must find a different excuse for controlling who should operate in interstate com-

merce. This court was saying that the state could not dictate who should be an interstate carrier and could not burden nor obstruct interstate carriers. The vice is in the dictating, or the burdening or the obstructing. That this is attempted to be accomplished in some different form or disguise than the exact form which the plan took in the State of Washington, cannot render inapplicable the principles laid down by this court.

Certainly if, after the *Buck* decision, the State of Washington had passed an act saying that no carrier could stop on any highways of the state to receive or discharge a passenger unless it obtained a certificate of public convenience and necessity from the state, that act would have been unconstitutional.

The Hammond ordinance imposes both a direct and an unreasonable burden on an interstate carrier. Its primary purpose is not regulation, but the prohibition of every motor bus carrier not authorized to operate by the city. Under this ordinance city officials are to determine whether an interstate carrier is to be affected by the proposed limitation. It requires an interstate carrier to obtain either a franchise or a permit from the city before he can in fact carry on his interstate operations.

This is not a case wherein the court has determined that interstate carriers by motor bus are not subject to reasonable, nondiscriminatory police regulation. That power in the state, and in the city if delegated the power by the state, so long as the regulation does not unduly interfere with and burden interstate commerce, is undisputed. If we accept petitioner's present explanation of the basis of the alleged power to enact the ordinance, *i. e.*, that it ends "unauthorized operation", it is an attempt to cut across the *Buck* and *Bush* decisions of this

court. It is an endeavor to evade the principles enunciated by this court in *Railroad Co.* v. *Husen,* 95 U. S. 465. (See p. 16 of this brief.) It is an endeavor by the city to determine, *inter alia,* who, if anyone, may do interstate business between Illinois and the City of Hammond. In effect, it makes resort to municipal officials the test of the right to carry on interstate commerce. It is an attempt by a municipality to accomplish by means of a frail disguise the thing which this court has determined cannot be done by the state.

The Circuit Court of Appeals in refusing to adopt petitioner's contention was merely guided by the clear illumination of the decisions of this court. Petitioner is asking this court to review this case in order to redetermine the principle of its own recent decisions.

III.

ORDINANCE 1945 IS INVALID AS AN UNWARRANTED INTERFERENCE WITH RIGHTS GRANTED RESPONDENT AS AN INTRASTATE CARRIER UNDER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ISSUED BY THE STATE OF INDIANA.

Respondent is authorized to carry on its intrastate operation, upon the route over which it has operated for four years, under a certificate of public convenience and necessity issued by Public Service Commission of Indiana. The Circuit Court of Appeals recognized the force and validity of this certificate and that the City of Hammond could not interfere with the rights granted under this certificate. This is clearly the law. Petitioner sought not only to discriminate against the certificate holder but to deny the certificate holder the right to operate at all over a portion of the route covered by the certificate and to deny the certificate holder the right to stop to

receive or discharge passengers over the remainder of that route within the City of Hammond. These acts were an attempt by the city to nullify and destroy the certificate granted by the state itself and to dictate where and how the certificate holder could operate. This the city cannot do. The certificate of the State Commission is paramount. It cannot be destroyed by purporting to enact local regulations.

City of Nelsonville v. *Ramsey*, 148 N. E. 694 (decided by the Supreme Court of Ohio, June 9, 1925).

Parker v. *Silverton*, 109 Ore. 298.

To avoid the force of these decisions, petitioner insists that the certificate issued by Public Service Commission is invalid. It contends, first, that respondent, being an Illinois corporation, could not be granted a certificate in Indiana. To maintain the contention that respondent, not being a corporation organized in Indiana, could not operate intrastate as a common carrier in Indiana, petitioner relies upon Acts of Indiana, 1913, c. 76, sec. 99, p. 201:

> "No license, permit or franchise to own, operate, manage or control any plant or equipment of any public utility shall be hereafter granted or transferred except to a corporation duly organized under the laws of the State of Indiana or to a citizen of such state."

In relying upon this statute, petitioner loses sight of the fact that, if it may be applied to motor bus regulation at all, its application therein is limited. Control of motor bus operation was first attempted by the State of Indiana in the Acts of 1925 (Acts of Indiana 1925, c. 46, p. 138). This act is set out in full in the appendix to the petition.

Section 1 of that act declares motor busses transporting persons for hire to be public utilities and governed by the Public Utility Act,

> "in so far as the terms and provisions of said act may be reasonably applicable to such carriers."

Section 2 makes it necessary to obtain a certificate of public convenience and necessity from the Public Service Commission of the state and then provides:

> "That the owner of any motor vehicle common carrier service which has been lawfully operated over a fixed route with a substantially regular schedule, upon the highways of the state for a period of ninety days immediately prior to the taking effect of this act and is engaged in such operation at the time of filing application therefor, shall receive from the public service commission a certificate of convenience and necessity to continue such operation,—"

upon filing an affidavit and complying with formal requisites.

It is not necessary here to determine whether section 99 of chapter 76 of Acts of Indiana, 1913, is applicable to any motor bus common carrier. Certainly it would be a forced construction in the light of the limitations in the application of the 1913 Act to motor busses as fixed in section 1 of the 1925 Act, to read section 99 as a limitation upon the proviso of section 2 above quoted. This would deny to nonresident individuals as well as foreign corporations the right to continue their established business lawfully commenced. Whether such a construction would leave the act constitutional need not be decided. The clear intendment of the legislature was to protect *all* bona fide operators on authorized routes. It did not intend that this protection should be nullified by the 1913 Act.

Acts of Indiana, 1925, c. 46, sec. 5, p. 140, provide:

> "and *Provided, further,* That in any city or town of this state where motor transportation is now furnished under, or by color of, a contract, and in cities and towns contiguous thereto, the board of public works, common council or board of trustees, as the case may be, shall continue to supervise, control, permit, contract for and regulate such service and to determine when, if at all, for public convenience and necessity competing service shall be established; * * *."

Petitioner next contends that, under this provision, Public Service Commission had no control over any motor bus service into the City of Hammond. The Supreme Court of Indiana has never passed upon the constitutionality or construction of section 5. The proviso is, however, clearly unconstitutional. It is invalid as creating an arbitrary and unreasonable classification having no just relation to the act in respect to which the classification is made.

Although cities may be identical in size and traffic problems, the control of local motor transportation in such cities as between the city council and the State Commission is determined by the circumstance, first, of the execution of a contract for such transportation service, and, second, that the city is contiguous to a city which has made such contract. This classification is made solely on whether color of contract has been made, or on the incident of geography. There is no distinction between cities coming under the proviso and those outside, based upon a natural or reasonable difference in transportation problems which the law seeks to regulate.

See cases cited in this argument, page 20, *ante.*

Even if the proviso in section 5 is valid, it does not

take away the right of respondent as a ninety-day operator to be granted a certificate from the state as a matter of right. It was not intended that the proviso of section 5 should nullify the proviso of section 2 and should make a discrimination between established operators. (See p. 31, *ante.*)

Furthermore, no reasonable construction of section 5 can extend that section to give the city control over interurban carriers who are not doing a local business within the city. The city cannot control interurban business within the state. Respondent in this case was doing no local business within petitioner city. It service was in no wise competitive with service rendered by Calumet Motor Coach Company under an alleged contract. The route of respondent was, therefore, one over which, under any interpretation, Public Service Commission had jurisdiction. That Commission, having issued a certificate, this certificate cannot be annulled by the city.

We have dealt briefly with the question of the invalidity of ordinance 1945 under the state laws, because the ordinance is so clearly in violation of federal law that it is unnecessary to unduly extend this brief by further analyzing the various provisions of the state laws regulating public utilities and motor busses.

IV.

THE DECISION IN THIS CASE IS NOT IN CONFLICT WITH LOCAL LAW.

The Indiana decisions referred to by petitioner do not bear out petitioner's contention that there is a conflict between the decision of this case and decisions of the Supreme Court of Indiana.

Farmers etc. Tel. Co. v. *Boswell Tel. Co.*, 187 Ind. 371,

discussed only the rights of competing local utilities as fixed by the 1913 Act. It did not determine the question of the power granted to Public Service Commission to issue certificates to interurban motor bus operators under the Act of 1925. Furthermore, this case presented no question of an attempted police regulation and had no bearing upon the question of an ordinance of police regulation. No decisions in Indiana sustain an ordinance which is a police regulation and distinguishes between members of the same class.

The cases of *Denny* v. *City of Muncie,* 149 N. E. 639 (decided by the Supreme Court of Indiana, Nov. 24, 1925), and *Frick* v. *City of Gary,* 192 Ind. 76, were cases upholding police regulations operating uniformly within the class. Both were decided upon ordinances adopted prior to the Acts of Indiana, 1925, regulating motor vehicle common carriers. In neither case was there any arbitrary and unwarranted classification. In neither was the burden unrelated to the public protection to be safeguarded. In neither was there any attempt to discriminate within a proper classification. In neither was there an endeavor to hamper and unduly burden carriers authorized to operate under state acts or in interstate commerce and to relieve from such burdens carriers who could obtain a consent from the municipality.

It is respectfully submitted, therefore, that petitioner has not shown error in the decision of the United States Circuit Court of Appeals. Petitioner has not made out a case warranting this court in granting the petition for a writ of certiorari, and this petition should be dismissed.

Respectfully submitted,

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Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 68.—October Term, 1927.

City of Hammond, Petitioner, *vs.* Farina Bus Line & Transportation Co. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 21, 1927.]

Mr. Justice Brandeis delivered the opinion of the Court.

This suit was commenced in the federal court for Indiana in June, 1925; and is here on certiorari to the Circuit Court of Appeals. 273. U. S. 675. As in *City of Hammond* v. *Schappi Bus Line, Inc.*, decided this day, the plaintiff, Farina Bus Line and Transportation Company, is an Illinois corporation; the defendant is the City of Hammond; the relief sought is an injunction to prevent the enforcement of ordinance No. 1945, adopted May 23, 1925; and the relief was denied by the District Court without finding any facts and without opinion. The Circuit Court of Appeals reversed the decree and remanded the case with directions "to enter a decree granting the injunction." The decision was rendered on the same day on which that court rendered its decision in the *Schappi* case. It, also, made no finding of facts. It filed no opinion and gave no reasons for its action save the statement that "the discussion there applies equally to this case."

The Farina Company operates a route from several small cities in Illinois through the Town of Munster, Indiana, to its terminal in the business district of Hammond. There, its busses connect with an allied street railway, which extends from Hammond into the City of Gary, Indiana; and through passengers from the Illinois cities to Gary pass over this route. A small percentage of the business is intercity traffic between Munster and Hammond; and, hence, intrastate. The Farina Company holds a certificate of public convenience and necessity issued by the Public Service Commission of Indiana under the Acts of 1925 for all its routes. The

Farina Company alleges that the ordinance, if enforced, will necessitate abandonment, not only of the existing routes, but of its business. The evidence, consisting mainly of affidavits, is conflicting.

The contentions, the issues of fact and of law, and the character of the evidence introduced, are largely similar to those in the *Schappi* case. But there are differences which may be important. The Calumet Company does not serve Munster or the small Illinois cities, so that it is not a direct competitor of the plaintiff. None of the busses carry local passengers within the City of Hammond. There is also a difference in the stage of the proceedings at which this case came before the Court of Appeals. It was heard on appeal from the final decree. An application for an interlocutory injunction had been made; but the cause was later submitted to the District Court by agreement of the parties, as upon final hearing, and the bill was dismissed.

The considerations which led this Court to remand the *Schappi* case to the District Court for further proceedings on final hearing are applicable in the main also to this case. We think that it should be heard by the District Court anew upon final hearing upon evidence to be adduced. To this end, the decree entered in the Court of Appeals is affirmed in so far as it reversed the decree dismissing the bill. In so far as it directs that an injunction issue, it is modified to the extent of directing an injunction pending the suit instead of a permanent injunction, the propriety of the latter being reserved until the final hearing. The cause is remanded to the District Court for further proceedings on final hearing, that court to have liberty, among other things, to allow amendment of the pleadings. Costs in this Court are not allowed to either party.

Decree modified and cause remanded to the District Court for further proceedings.

A true copy.

Test:

Clerk, Supreme Court, U. S.